



City of
Melville

AGENDA

ORDINARY MEETING OF THE COUNCIL

NOTICE OF MEETING

I respectfully bring to the attention of Elected Members that an Ordinary Meeting of the Council will be held in the Council Chambers, Melville Civic Centre, 10 Almondbury Road, Booragoon on Tuesday, 18 April 2023 commencing at 6.30pm.

Marten Tieleman
Chief Executive Officer

The City of Melville acknowledges the Bibbulmun people as the Traditional Owners and custodians of the lands on which the City stands today and pays its respect to the Whadjuk people, and Elders both past, present and emerging.

Register to attend electronically [Adjourned Ordinary Meeting of Council 18 April 2023](#)



Our Vision

Engaging with our diverse community to achieve an inclusive, vibrant and sustainable future.

Our Mission

To provide good governance and quality services for the City of Melville community.

Our Values

Excellence

Striving for the best possible outcomes

Participation

Involving, collaborating and partnering

Integrity

Acting with honesty, openness and with good intent

Caring

Demonstrating empathy, kindness and genuine concern



Making A Deputation

A deputation is a verbal presentation by one or more members of the public on a matter to be considered at the Council meeting. Deputations are made at the relevant Agenda Briefing Forum, held one week prior to the Ordinary Meeting of Council.

Information on making a deputation is available on the City's website [Request to make a Deputation](#).

Public Question Time

You can ask a question at a Council meeting during Public Question Time. Information on how to ask a question can be found on the City's website [Public Question Time](#).

Complex questions or those related to matters on the agenda and requiring a response at the meeting are "questions on notice" and should be submitted in writing, by the close of business the Tuesday prior to the meeting.

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Audio Recording/ Access to Recording

In accordance with the Council Policy CP- 088 Creation, Access and Retention of Audio Recordings of the Public Meetings this meeting is electronically recorded. All recordings are retained as part of the City's records in accordance with the State Records Act 2000 and the General Disposal Authority for Local Government Records. The Audio recording may be accessed at www.melvillecity.com.au/agendas.

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Nil.

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Without Previous Notice

MATTERS FOR WHICH THE MEETING WAS CLOSED

1 OFFICIAL OPENING

2 ATTENDANCE AND APOLOGIES

In Attendance

Apologies

On Approved Leave of Absence

3 DECLARATIONS BY MEMBERS

- 3.1 Declarations by Members who have not read and given due consideration to all matters contained in the business papers presented before the Meeting.**
- 3.2 Declarations by Members who have received and not read the Elected Members Bulletin.**

4 ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

Approved Deputations

Approved Written Submissions

5 DISCLOSURES OF INTEREST

5.1 Financial or Proximity Interests

Under sections 5.60A and/or 5.60B of the *Local Government Act 1995*

5.2 Disclosure of Interest That May Cause a Conflict

Under 22 *Local Government (Model Code of Conduct) Regulations 2021* or a City of Melville Code of Conduct)

6 PUBLIC QUESTION TIME

6.1 Questions Received with Notice

6.2 Questions Received at the Meeting

**6.3 Questions Taken on Notice at Previous Meeting
Ordinary Meeting of Council held 21 March 2023**

6.3.1 Dr Peterson, Bateman

Further to my deputation last month and responses to previous questions from me to the City:

Question 1

Why was the City's response, to a question I submitted last year, that the calls from an officer after hours and during work hours happened in 2010, when the warning letter was sent in March 2014 and the Police investigated calls up to the end of 2017?

Response

The following response provided in the Minutes of the 15 March 2022 Ordinary Meeting of Council:

"This relates to a matter dating back to circa 2010 that was a telecommunications and police matter that was considered by the Magistrates Court and the City will not be commenting on this matter further."

As such, the City will not comment further on this matter.

Question 2

Further to an email from the City dated 5 June 2020 in relation to an illegal and unsafe lattice structure that was encroaching over my property boundary, the email stated "the structure is located wholly within the property boundary." This information is incorrect and can the City advise why this incorrect information was provided?

Response

The information provided in the 5 June 2020 letter was correct at the time. The correspondence indicates that the structure was located within the neighbouring property boundary, however it had been tethered to Dr Peterson's brick wall by the State Emergency Services during late May 2020.

7 AWARDS AND PRESENTATIONS

8 APPLICATIONS FOR NEW LEAVES OF ABSENCE

9 CONFIRMATION OF MINUTES

9.1 Minutes of the Ordinary Meeting of Council – 21 March 2023
[OMC Minutes – 21 March 2023](#)

That the Minutes of the Ordinary Meeting of Council held on Tuesday, 21 March 2023 be confirmed as a true and accurate record.

9.2 Minutes of Governance Committee – 30 March 2023

That the Minutes of the Governance Committee Meeting held on Thursday, 30 March 2023 be noted.

9.3 Special Meeting of Council – 3 April 2023

[\(The minutes of the Special Meeting of Council will be available on 7 April 2023\)](#)

That the Minutes of the Special Meeting of Council held on Monday, 3 April 2023 be confirmed as a true and accurate record.

9.4 Notes of the Agenda Briefing Forum – 11 April 2023

[\(The notes of the Agenda Briefing Forum will be available on 14 April 2023\)](#)

That the Notes of the Agenda Briefing Forum held on Tuesday, 11 April 2023 be confirmed as a true and accurate record.

10 NEW BUSINESS OF AN URGENT NATURE

11 IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

12 PETITIONS

Nil.

13 ADOPTION OF RECOMMENDATIONS EN BLOC

That the recommendations for:

- **C23/6000 – Investment Statements for January 2023**
- **C23/6001 – Schedule of Accounts Paid for January 2023**

be carried En Bloc.

14 REPORTS

14.1 Reports from Committees

Nil.

14.2 REPORTS OF THE CHIEF EXECUTIVE OFFICER

Management Services

At the [Ordinary Meeting of Council held 21 March 2023](#), Mr McLerie gave a deputation and officer's provided an Advice Note on this matter.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

Ward	: All
Category	: Executive
Subject Index	: Property Index 14 Beach Street, Bicton
Customer Index	: City of Melville
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Item 15.3 Review of 14 Beach Street Boundary Foundation and Retaining by an Independent Registered Building Surveyor - Ordinary Meeting of Council held 16 August 2022. Item M22/5937 Review of 14 Beach Street Boundary Foundation and Retaining by an Independent Registered Building Surveyor – Ordinary meeting of Council held 15 November 2022.
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Patrick Hughes Manager Building and Environmental Health Services

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

KEY ISSUES / SUMMARY

- At the 16 August 2022 Ordinary Council Meeting, a Motion with Notice was supported that an independent registered building surveyor be appointed to undertake an inspection of the boundary structure footings and associated retaining structures located at 14 Beach Street, Bicton and provide a report back to the 18 October 2022 Ordinary Meeting of Council.
- This Item was discussed at the Elected Member Engagement Session held 4 October 2022 where it was advised that a report would be presented to the November 2022 Council Meeting.
- A report was then presented to the 15 November 2022 Meeting that provided an update on the progress of actions taken in implementing the August 2022 Council resolution.
- An Independent Registered Building Surveyor (TESG) was appointed, and an inspection of the site was undertaken on 9 December 2022.
- The Final Independent Registered Building Surveyor Report was received on 13 March 2023, and as required by the August 2022 Council resolution, the report is presented to the Council.
- This report recommends that the Council notes the TESG report and consider the Officer recommendation in relation to this matter.

BACKGROUND

At the 16 August 2022 Ordinary Meeting of the Council it was resolved that:

“That the Council directs the CEO to:

- 1. appoint an independent registered building surveyor to undertake an inspection of the boundary structure footings and associated retaining located at 14 Beach Street, Bicton, and***
- 2. provide a report back to the 18 October 2022 Ordinary Meeting of Council which includes a copy of the independent registered building surveyor’s and any other relevant reports.”***

The reasons provided in support of the motion were:

- Since 2017 there have been questions and opinions provided relating to the boundary of 14 Beach Street.
- The Objective is to:
 - inspect the entirety (eastern and western sides) of the footings and retaining on which the boundary structure rests;
 - identify any issues or non-conformances relating to the footings and retaining when compared to Building Approval Certificate (BA14) BA-2017-466;
 - identify any additional issues that become apparent during the inspection.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

- The City will:
 - gain an understanding of the current condition of the entirety of the foundation and retaining along the boundary of 14 Beach Street, Bicton
 - an independent entity will either confirm the foundation and retaining as-built and current condition aligns with the drawings supplied with BA-2017-466 or advise otherwise.
 - be informed as to a path forward should rectification of the foundation, retaining and any other issues be required.
- Potential Risks:
 - Continued lack of clarity in relation to the “as built” status of the foundation and retaining. No resolution to lack of retaining issue.

The Officer Advice Note provided to the August 2022 meeting was:

“Written consent must be obtained, from both property owners, to implement the motion if supported. Without this consent, the CEO cannot implement the actions proposed in the motion.

The objectives call for an inspection of the eastern and western sides of the footings and retaining. The orientation of the properties is that these are the northern and southern sides. To implement the motion as presented, access to both 12 and 14 Beach Street would be required.

The property owner of 12 Beach Street has the option to provide written consent for City Building Surveyors to conduct part of the inspection from their property. If this consent is not provided, this will greatly restrict the City’s ability to assist and investigate. The City will not be in a position to pursue any compliance enforcement process unless evidence is obtained by City Officers. This has been confirmed through legal advice from McLeods.

A specific inspection of the boundary retaining structures and footings may require a Structural Engineer to gain access to both properties. This may result in destructive or sample testing of the structures (coring, digging etc.). Consent will be required from the owner of 14 Beach Street for this to occur, if required.

A Building Surveyor will only provide a visual inspection of the footings and retaining, then provide a conclusion if they believe the structures comply with approved plans and assess if the structures are in a dangerous state. It is not recommended that this motion be put forward until written consent is submitted to the City, from the owners of 12 and 14 Beach Street, for the inspection to take place.”

DETAIL

TESG Building Surveyors were appointed to undertake the inspection, which was undertaken on Friday, 9 December 2022.

A draft copy of the report was received on 15 February 2023, with a final report being received 10 March 2023. Minor changes to correction of dates and numbering were made with the latest corrected version of the report being received Monday, 13 March 2023.

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Elected Members have been advised of the progress of this matter in the Elected Member Bulletins of 3, 17 and 24 February and 3 March 2023. A copy of the 15 February 2023 draft report was published to the Elected Member Portal on 17 February 2023.

The [TESG 14 Beach Street, Bicton Building Code Compliance Report](#) is provided as an attachment to this report.

The following observations are made in relation to the report:

1. The report has confirmed that the screen wall, the subject of this ongoing dispute, appears to be constructed in accordance with Building Approval Certificate BA-2017-466. That is significant, as consistent allegations have been made that the screen wall was not constructed in accordance with that Certificate.
2. The report also noted that, in the independent Building Surveyor's view, although the remains of the limestone retaining wall is not in compliance with the approved structural details for BA-2002-2166, issued in 2002, the limestone retaining wall is not displaying any signs of imminent danger of collapse. As a result, the independent Building Surveyor's view is that the retaining wall is not in a dangerous state and therefore there is no basis, pursuant to the *Building Act 2011*, for the City to pursue any building compliance enforcement action against the owner (14 Beach Street) of the retaining wall to direct them to carry out any repair work.
3. The inspector is also of the view that the City cannot issue the owner of the screen wall (14 Beach Street) a Building Order requiring the outward facing side of the screen wall to be finished in a particular way, pursuant to s.88, *Building Act 2011*. The City has been made aware that the owner of 12 Beach Street will not permit the owner of 14 Beach Street, or her contractors, to enter his property to finish the screen wall, the works cannot be undertaken.
4. Legal advice indicates that in relation to the circumstances above, if the City were to issue a building order (which appears doubtful), it would be invalid and unenforceable.

In view of the report findings, the City is not required to take any further action in this matter, unless the City receives a report by a Structural Engineer that confirms what remains of the retaining wall or any other part of the structure is in a dangerous state. Subsequently, without the consent of the owner of 14 Beach Street, this would require the owner of 12 Beach Street to allow a Structural Engineer onto their property to carry out a visual inspection only of the boundary structures and what remains of the limestone retaining wall.

Invasive sample testing of the structures on 14 Beach Street cannot be undertaken without the property owner's consent. The owner of 14 Beach Street has previously declined consent to access their property for any further inspections and it is for this reason that undertaking a visual inspection to confirm structural adequacy from 12 Beach Street, is not presented as an alternative recommendation.

Previous legal advice obtained in relation to this matter, that is still relevant, has been provided to Elected Members in the 17 March 2023 Elected Members Bulletin. The advice provides the opinion on how the Council may proceed with this matter, which is reflected in the City Officer recommendation.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

STATUTORY AND LEGAL IMPLICATIONS

The TESG report makes reference to the following sections of the Building Act 2011:

Section 88 Finishes of walls close to boundaries.
Section 110 Building Orders
Section 112 Content of Building Order

FINANCIAL IMPLICATIONS

The cost to undertake the inspection and provide the report was \$6,490. Additional expenditure may be incurred should the Council request the independent Building Surveyor to attend a briefing session, to present and discuss his report.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

The report addresses the risk and concerns regarding the structural adequacy of the limestone retaining wall located adjacent to the side allotment boundary with 12 Beach Street, Bicton.

POLICY IMPLICATIONS

The Council Policy CP-114 Compliance and Enforcement Policy needs to be considered in relation to any compliance and enforcements actions relating to this matter.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The August 2022 Council resolution requires that the independent building surveyor's report and any other relevant reports be presented to the Council.

The options now available for the owners of 12 and 14 Beach Street in relation to this matter are:

- The owner of 14 Beach Street may wish to appoint a Structural Engineer to undertake an inspection of the structures and footings of the boundary structures, adjacent to 12 Beach Street, as recommended by the independent Building Surveyor.
- As the City does not have cause at this time to undertake any further action in relation to this matter, in accordance with Recommendation 10 of the Weir Report and legal advice, refer the owners of 12 and 14 Beach Street to processes under the Dividing Fences Act or other legal processes to reach agreement and/or to resolve this matter.
- The owner of 12 Beach Street may wish to appoint a Structural Engineer to undertake a visual inspection only of the 14 Beach Street boundary structures, therefore is considered of limited value.

The options in the above dot points are not enforceable pursuant to the *Building Act 2011*, however, the City will continue to support attempts to achieve the report recommendations.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

CONCLUSION

The TESG Report on the boundary structure footings and associated retaining located at 14 Beach Street, Bicton is presented to the Council as required by the August 2022 resolution. The report provides observations made in relation to the report recommends and advises of options that are now available for the Council to consider.

OFFICER RECOMMENDATION (5937)

NOTING

That the Council:

- 1 Notes the [TESG 14 Beach Street, Bicton Building Code Compliance Report](#) dated 10 March 2023; and**
- 2 In accordance with Recommendation 10 of the Weir Report and legal advice received, that the owners of 12 and 14 Beach Street, Bicton now be advised to avail themselves to processes under the Dividing Fences Act or other Legal Processes to reach agreement on the way that the screen fence is finished and resolve any retaining wall and fence matters.**

Alternative Motion

At 7:25pm (on 21 March 2023) Cr Edinger moved, seconded –

That the Council directs the CEO to:

- (a) appoint an independent structural engineer to undertake an inspection of the boundary structure footings and associated retaining located at 14 Beach Street, Bicton, and**
- (b) provide a report back to the July 2023 ordinary meeting of Council which includes a copy of the independent structural engineer's and any other relevant reports.**

Reasons as provided by Cr Edinger

In the Executive Summary the TESG report conclusion is that:

1. The only structural certification provided by Terpkos civil & structural consulting that relates to the mass limestone retaining wall and screen wall is in the letter dated 14 December 2015.
2. There is no structural certification that specifically addresses the structural adequacy of the limestone retaining wall located adjacent to the side allotment boundary with 12 Beach Street.

The building surveyor goes on to make the recommendation that “the limestone retaining wall located adjacent to the side allotment boundary with 12 Beach Street should be inspected by a structural engineer to determine the structural adequacy of the retaining wall to determine: (a) compliance with the approved structural drawings, in particular compliance with Notes 5, 7 and 10; and (b) whether the limestone retaining wall and screen wall can reasonably be believed to be dangerous.”

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

At 7:25pm (on 21 March 2023) Cr Edinger amended the Alternative Motion with Notice before a seconder was sought.

Alternative Motion

At 7:25pm (on 21 March 2023) Cr Edinger moved, seconded –

That the Council directs the CEO to:

- **provide all structural engineering reports; and**
- **provide Building and Energy’s presentation, to the Council, of June 2020 to TESG for review of Independent Building Surveyors Report to determine if additional information can be incorporated and the matter be presentation to an Elected Members Engagement Session in May 2023 to with a report to the Ordinary Meeting of Council 20 June 2023.**

At the Ordinary Meeting of Council held 21 March 2023, Item M23/5964 – Review of 14 Beach Street Boundary Foundation and Retaining by an Independent Registered Building Surveyor was deferred to the 18 April 2023 Ordinary Meeting of Council to allow for the matter to be discussed at an Elected Member Engagement Session for further discussion.

At the time of deferral and pursuant to clause 13.4 of the *City of Melville Local Government (Meeting Procedures) Local Law 2022* it is noted that:

- Cr Edinger introduced her amended alternative motion.

In resuming debate on this matter, clause 12.11(1) of the *City of Melville Local Government (Meeting Procedures) Local Law 2022* applies:

“A Member is not to address the Council more than once on any motion or amendment except-

- (a) as the mover of a motion, to exercise a right of reply; or*
- (b) to raise a point of order; or*
- (c) to make a personal explanation; or*
- (d) subject to clause 10.3, to ask a question.”*

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

KEY ISSUES / SUMMARY

- At the 13 December 2022 Ordinary Meeting of Council, the Council accepted the Weir Legal and Consulting (WLC) - City of Melville Review of Complaints – Building and Planning (Weir Report).
- The Council also noted the City's Response to the 15 Recommendations contained in the report and requested a review and report on the Findings contained on pages 13 to 19 of the report.
- Several presentations have been made at Elected Member Engagement Sessions on the actions undertaken in relation to implementing the Weir report recommendations, the latest being to the Elected Member Engagement Session held 28 February 2023.
- On 2 March 2023, the City received a letter from the Department of Local Government, which made specific reference to the release of the Weir Report to the community.
- This report presents the review of the findings contained on pages 13 to 19 of the report and provides a recommendation in relation to the publication of the report.

BACKGROUND

At the Ordinary Meeting of Council held 13 December 2022 the Council resolved:

That the Council

1. **Accepts the Weir Legal and Consulting, City of Melville Review of Complaints Building and Planning report dated 17 September 2021 (Final Weir Report).**
2. **Notes the City's Response to the Recommendations Contained in the Final Weir Report.**
3. **Directs the CEO to:**
 - a. **finalise the "A Way Forward" Recommendations and Responses**
 - b. **review and report on the Findings of the Weir Report, contained on pages 13 - 19 of the report;**
 - c. **report back to the April 2023 Ordinary Meeting of Council.**

The reasons provided in support of the resolution were:

1. *The Recommendations and Responses are incomplete.*
2. *The Findings have not been responded to. It is not acceptable to use the excuse that "the findings contained in the Draft Report were translated to the 15 "A Way Forward" recommendations in the Final Weir Report" as a reason to not examine the Findings in detail. (Refer p10 of the Agenda)*
3. *The Privacy Act 1988 is clear on what constitutes private information ("personal information" means information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not").*

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

Since February 2022, Elected Members have been provided with regular updates on the progress of the City's implementation of the fifteen "A Way Forward" recommendations, the latest being at the 28 February 2023 Elected Member Engagements Session.

Officers will continue to undertake required actions and report on the outstanding recommendations until finalised and are recommending that the City's response to the recommendations be published to the City website, when finalised.

While comment on the findings listed on pages 13 to 19 of the Final Report has been provided, as requested, the findings have been reflected in the 15 recommendations identified in the report and accordingly are dealt within responses to the recommendations. Other matters are noted or responded to in the attachment, which is confidential as the Council has not, yet made a decision to release to report.

The confidential attachment to this report was distributed to Elected Members on Friday, 31 March 2023.

DETAIL

At the December 2022 Ordinary Meeting of Council, no decision was made by the Council in relation to releasing the report to the public. While the document has been requested and released in a redacted version to an applicant under the Freedom of Information Act, it is also for the Council to consider publishing the document, either in its entirety or in some edited format, in the public interest.

At the 19 November 2019 Council Meeting (Item 13.3 Petition – Request for Independent Review) a petition was received signed by 77 residents dated 3 November 2019 the petition requested that:

*"We, the undersigned, all being electors of the City of Melville, respectfully request that the Council conduct an independent review, by parties and on terms as mutually agreed between Council and Mr McLerie, of the performance and conduct of the City of Melville in respect to Mr McLerie's various building related and consequential complaints since 2012, as mentioned in his **27 October 2019 letter to Council**; in relation to various matters that have caused Mr McLerie and his family significant damage and unwarranted distress."*

As a consequence of the petition, several related reports have been presented to and considered by the Council between November 2019 and November 2022, which has further put the matter in the public domain.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

The various items presented to and considered by the Council are:

5 February 2020	Governance Committee	Item 8.1 Motion Without Notice – Independent Review – Mr McLerie (Building Related and Consequential Complaints)
18 February 2020	Ordinary Meeting of Council	Item M20/5730 Report of the Governance Committee Meeting Held 5 February 2020
17 March 2020	Ordinary Meeting of Council	Item M20/5730 M McLerie – Independent Review – Building Related and Consequential Complaints
24 June 2020	Governance Committee Meeting	Confidential Item C20/5752 – McLerie Independent Review -
29 June 2020	Special Meeting of Council	Late Item – Confidential Item M20/5755 Independent Review
19 October 2020	Governance Committee	Item C20/5777 Independent Review – Cessation of Contract
17 November 2020	Ordinary Meeting of Council	Item C20/5788 Independent Review – Cessation of Contract Mr McLerie made a deputation at the 3 November 2020 Agenda Briefing Forum.
15 November 2022	Ordinary Meeting of Council	Item M22/5927 – Independent Review – Weir Legal and Consulting Report Mr McLerie made a deputation at the OMC

The Officer Report to the December 2022 Council Meeting provided the following information and options relating to publishing the report.

The Final Weir Report contains the initials and positions of City of Melville Officers and the initials of the Complainants, which could personally identify individuals. In considering publicly releasing the Final Weir Report, the Council should consider whether to redact any identifying information.

The options presented at the December 2022 Council meeting for publishing the report included:

1. Publishing the Final Weir Report in full accompanied by the City’s response to the 15 recommendations.
2. Publishing the Final Weir Report accompanied by the City’s response to the 15 recommendations, with the initials of the Complainants and details that may identify staff being redacted.
3. Publishing a version of the Final Weir Report with any opinion and/or commentary associated with the Complainants and/or City Officers and the initials of the Complainants and the positions of Officers being redacted.
4. The Final Weir Report is not published.

At that time, the administration recommended Option 2 as being the preferred option, with the redacted report being published to the City’s website. A copy of the redacted in line with Option 2, was included as a confidential attachment to the December report.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

Legal Advice

When considering the release of the report at the December 2022 Council Meeting, concern was expressed by an Elected Member regarding the responsibility and liability of individual Elected Members in respect to potential defamation action, should the Council resolve to publish the report in full, in part or with information redacted.

Legal advice was sought in relation to publishing the report and the responsibility and liability of individual Elected Members in respect to potential defamation action should the Council resolve to publish the report. Elected Members were provided with a copy of the legal advice in the Elected Member Bulletin of 16 December 2022.

In relation to this matter, section 9.56 of *the Local Government Act 1995* provides a significant degree of protection from liability in respect of “an action in tort” (which includes an action for defamations). The protection from liability applies to individual Council members and employees of local governments in respect of anything that the person has, in good faith, done in the performance or purported performance of a function under the Act or any other written law.

The legal advice addresses the “in good faith” and “defamatory material” aspects that relate to this matter. There are sound public interest grounds to support the publication in full of a report of this nature, particularly in the context of the investigation that:

- commenced by the submission of a petition to the Council, signed by 77 residents of the City of Melville requesting the investigation,
- the scope of the investigation which was to review the City’s customer interactions in relation to planning, building and environmental health complaints received, with a view to identifying improvements to the City’s systems and processes, and
- being consistent with openness, transparency and accountability objectives, particularly in the context of the investigation and the circumstance in which it was undertaken and the significant expenditure of public funds.

On the 2 March 2023 the City received correspondence dated 28 February 2023 from the Department of Local Government relating to Governance Concerns at the City of Melville, that required the City to provide a response to the Department’s concerns by the close of business 28 April 2023. One of the matters identified in the letter of concern is that the City needs to provide a response to is that:

“the Council commits to release the final Weir Legal and Consulting Report on the Review of Building and Planning Complaints at the City of Melville in entirety and the City’s progress in implementing the recommendations.”

The findings on pages 13 to 19 of the report respond to 24 questions that were raised relating to the MR complaints. These complaints relate to a 30 unit development approved under the Canning Bridge Activity Centre Plan (CBACP) on the property neighbouring one of the complainants. Officers have provided comment on each of the findings - review and report on the Findings of the Weir Report, pages 13 – 19 of the report.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

Overarching comments made by Weir Legal, relating to the MR complaints can be found on pages 4 to 6 of the report.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

There has been no engagement with the community in relation to the Final Weir Report.

II. OTHER AGENCIES / CONSULTANTS

The Department of Local Government has provided comment on the release of the report and the Office of the Information Commission has been consulted in relation to the released of the report because of a Freedom of Information application, requesting a copy of the report.

STATUTORY AND LEGAL IMPLICATIONS

Legal advice that has been received in relation to publishing the report has been advised in the report. The final report remains confidential, at this point in time, as it is alleged by a party that the report contains their personal information.

Section 5.23 of the Local Government Act 1995 provides that, if the Council wishes to discuss the contents of the report and/or findings that the meeting maybe closed to the public if the meeting or part of the meeting deals with or is going to deal with *the personal affairs of any person*.

Section 9.56 of the Act relates to protections to elected members as follows:

Section 9.56. Certain persons protected from liability for wrongdoing

- (1) *A person who is —*
 - (a) *a member of the council, or of a committee of the council, of a local government;*
or
 - (b) *an employee of a local government; or*
 - (c) *a person appointed or engaged by a local government to perform functions of a prescribed office or functions of a prescribed class, is a protected person for the purposes of this section.*
- (2) *An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or under any other written law.*
- (3) *The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act or under any other written law may have been capable of being done whether or not this Act or that law had been enacted.*
- (4) *This section does not relieve the local government of any liability that it might have for the doing of anything by a protected person.*

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

- (5) *In this section —*
- (a) *a reference to the doing of anything includes a reference to the omission to do anything;*
 - (b) *a reference to the doing of anything by a protected person in the performance or purported performance of a function under any written law other than this Act is limited to a reference to the doing of anything by that person in a capacity described in subsection (1)(a), (b) or (c), as the case may be.*

FINANCIAL IMPLICATIONS

The work undertaken by Weir Legal and Consulting to undertake the independent review and produce the City of Melville Review of Complaints – Building and Planning was at a total cost of \$128,590.

In addition to the Final Weir Report, legal fees in respect to the properties the subject of this report were estimated to be more than \$95,000.

Additional funds of approximately \$7,500 have been incurred in appointing an independent building surveyor to undertake an inspection related to recommendation 10 of the report.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement & Consequence	Level of Risk	Risk Treatment
The City of Melville has expended considerable ratepayer funds to undertake the Independent Review. Given that the process was initiated to address concerns expressed by members of the community and the complaints have been previously levelled at the City in respect to a perceived lack of openness and transparency, reputational risk may arise if the community is not provided with access to the Final Weir Report and the actions proposed to be undertaken and/or implemented by the City in response to the 15 recommendations.	Medium	That due to the public interest in this matter and in the interests of openness and transparency the Council publish the report with the comments on the findings and actions undertaken by the City in response to the 15 Recommendations identified.
That members of the community (the Complainants) and Officers (some of whom no longer work at the City) may be identifiable by the contents of the full Final Weir Report.	High	That relevant identifying information (e.g. the initials of the Complainants and the position of officers) be redacted from the version available to the public.
The Complainants may object to the redacted version of the Final Weir Report being released.	High	That identifying information be redacted to mitigate the possibility of involved parties being identified.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

POLICY IMPLICATIONS

Relevant Council Policies, systems, procedures and practices have been and will continue to be reviewed and amended in order that the recommendations as agreed, are met.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Weir Legal and Consulting spent 10 months gathering and considering information, conducting interviews, liaising with the parties involved with the review, and writing the report.

At the December 2022 Meeting the Council accepted the report. It is for the Council to note the comments on the findings contained on pages 13 – 19 of the Report or to request further actions, if required. It is also for the Council to resolve to publish the report either in its entirety, with initials and information identifying the Complainants and Officers involved redacted or not to publish it at all.

The City will be advising the Department of Local Government of the outcome of the Council decision in regards to the Weir report as requested as part of its response by 28 April 2023.

CONCLUSION

The Council's purpose of the independent review of was to review:

- issues associated with the Planning, Building and Environment Health matters raised by two Complainants and
- the City's interactions with both residents relating to their complaints.

The City acknowledges, the outcomes of the in-depth review and the identified improvements in its systems, policies, processes and procedures. The 15 recommendations contained within the Final Weir Report are supported. Since the Final Report was received in September 2021, actions have been undertaken to implement the 15 recommendations and the Council has been advised of this progress through regular updates.

In view of the legal advice received in relation to the proposed publication of the Weir report and the Department of Local Government letter of 28 February 2023, Officers recommend that the Weir Report be published to the City website in its entirety. Should the Council resolve to publish the report in an alternative format, reasons for doing so should be provided so that these can be communicated to the Department of Local Government.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

OFFICER RECOMMENDATION (5968)

APPROVAL

That the Council:

- 1. Notes the review and report on the findings of the Weir Report, contained on pages 13 – 19 of the report; and**
- 2. Directs the CEO to publish on the City's website:**
 - a. The Weir Legal and Consulting City of Melville Review of Complaints Building and Planning, in its entirety; and**
 - b. the City's Response to the Recommendations contained in the Final Weir Report, when finalised
for a minimum of two years.**

M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A HARRIS STREET, BICTON (REC)

Ward : All
 Category : Policy
 Application Number : Not Applicable
 Property : 89A Harris Street, Bicton
 Proposal : Not Applicable
 Applicant : Not Applicable
 Owner : J Stevens
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Item 12.1 Petition - Request for Resolution of Building Complaints – Ordinary Meeting of Council held 21 March 2023.
 Responsible Officer : Marten Tieleman
 Chief Executive Officer

AUTHORITY / DISCRETION

DEFINITION

<input checked="" type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

- | |
|---|
| <ul style="list-style-type: none"> • A petition signed by 24 residents was received from Dr J Stevens on 20 February 2023 requesting resolution of his building complaints. • Elected Members were advised of receipt of the petition in the 24 February 2023 Elected Member Bulletin and the petition was considered by the Council at the 21 March 2023 Council Meeting. • The Council resolved to acknowledge the petition and that a report on the petition be prepared and presented to the April 2023 Council Meeting. • This report makes reference to the encroachment and retaining wall/dividing fence issue, that is the subject of the petition and provides comment on the petition. |
|---|

M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A HARRIS STREET, BICTON (REC)

BACKGROUND

At the 21 March 2023 Ordinary Meeting of Council, the Council considered a petition submitted by Dr Jeffery Stevens on 20 February 2023, signed by 24 residents of the City of Melville.

The petition requested:

“We, the undersigned, all being electors of the City of Melville, respectfully ask Council to take all necessary steps, using Council’s powers and duties conferred upon it by the Building or other relevant Acts of Parliament and independent of the CEO and the Administration, to investigate and RESOLVE to my satisfaction the complaints I have made since September 2021 in relation my rear neighbours unauthorised building works, inclusive of the retaining structures encroaching on my land without my consent.”

The Council resolved to acknowledge the petition and that a report be prepared and presented to the April 2023 Council Meeting.

Dr Stevens complaints relate to allegations that the owner of the neighboring rear property (6B First Street Bicton) has building works that encroach onto his property at 89A Harris Street and that the structures were installed without Dr Stevens consent. Dr Stevens also requested that the panel and post retaining wall and Colorbond boundary fence, within his property boundary, be moved to the actual property boundary line.

Questions in relation to this matter were also asked at the 20 February 2023 and 21 March 2023 Council Meetings and a written submission was received from Mr M McLerie that, at his request, was included as an attachment to the 21 March 2023 Council Minutes.

The petition requests that the Council undertake all necessary steps to investigate and resolve the matters. The Council or a committee of Council has no authority or ability to investigate and resolve complaints. The premise of the petition therefore cannot be supported as it is a function of the CEO and the administration to undertake the duties and functions that relate to building issues, the associated administrative matters and dealing with residents’ complaints. These actions are undertaken in accordance with Council’s Compliance and Enforcement Policy CP-114.

City officers have spent a significant amount of time communicating with both owners and investigating, researching the previous applications, approvals and actions undertaken by the owner of 89A Harris Street and the previous and current owners of 6B First Street.

Relevant information has been forwarded to the City’s legal advisor who has reviewed the information and provided the owners with appropriate advice on how to resolve the issues. The City’s legal advisors have undertaken an independent review and a further review of these matters is not required.

The petition also requests that the matters and Dr Steven’s complaint be “resolved” to his satisfaction. Again, this is best pursued as a civil matter as it is a private property boundary dispute and will involve property owner consent to be resolved.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

Officers will continue to work through the various issues that relate to the building matters and Dr Stevens complaints and will provide a report to an Elected Member Engagement Session on the findings and actions that can and are being undertaken. Time permitting, it is proposed that this presentation will be conducted prior to the 18 April 2023 Council Meeting. Further information has now been obtained from the developer that owned 6B First Street, prior to the current owner and prior to demolition, subdivision and reconstruction of the improvements that are located on 6B First Street that is relevant to resolving these matters.

DETAIL

City officers have been dealing with the respective residents and responding to the matter which are the subject of this petition. When issues were identified that required attention by both property owners it was considered that the best course of action was that the owners resolve the matter amicably between themselves as opposed to taking the regulatory approach.

Council or a Committee investigating complaints.

The matter of the Council or a Committee of the Council has been previously researched and reported on to the Council in February 2020. On that occasion the City sought legal advice in relation to the Council being informed of and undertaking investigations in relation to complaints received.

From the legal advice received at that time it is advised that it is not lawful and appropriate for the Council to be an investigative body. For example, the Council has no powers to require evidence to be given or to test the veracity of evidence that is given (such as by way of requiring evidence to be on oath or affirmation, or by way of cross-examination). The major legal obstacle to this motion is that there is no express power under the *Local Government Act* for the Council itself to undertake an investigation, or to undertake administrative functions ancillary to the undertaking of an investigation. The generally express powers that the Council has under the *Local Government Act 1995* would be construed in the context of the Council's governance role and governance functions under section 2.7 of the Act – and in the context of the CEO's management role and management functions under section 5.41 of the Act.

The Council's governance role is not consistent with the Council itself undertaking an investigation into complaints made by a member of the public – particularly in circumstances where those complaints are within the jurisdiction of specialist external investigative bodies.

Should a complaint involved allegations of 'serious misconduct' against one or more City employees, the allegations are within the jurisdiction of the Public Sector Commissioner and then the can and should be reported to the Public Sector Commissioner under section 45E of the CCM Act.

Complaints involving allegations of maladministration by the City (not necessarily involving serious or minor misconduct, but simply that the City's actions did not meet reasonable standards expected of a local government), they are within the jurisdiction of the State Ombudsman and may be the subject of a complaint to the Ombudsman under section 17 of the *Parliamentary Commissioner Act 1971*.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

Other external agencies with specialist investigative powers, procedures and expertise to deal with complaints, depending on their nature, include the Office of the Information Commissioner, the Building & Energy (DMIRS), the Office of the Auditor General and the Department of Local Government, Sport and Cultural Industries.

The City could be exposed to the risk of legal challenge based, for example, on the Council (or a committee) unlawfully undertaking an investigate and/or any failure to conduct an investigation in accordance with the rules of natural justice or procedural fairness.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

No engagement with the Community has been undertaken relating to the petition.

II. OTHER AGENCIES / CONSULTANTS

No engagement with other agencies or consultants has been conducted relating to the petition.

STATUTORY AND LEGAL IMPLICATIONS

Section 5.41 of the Local Government Act prescribes the functions of the CEO, with 5.41 (d) being to manage the day-to-day operations of the City.

FINANCIAL IMPLICATIONS

Considerable administration time has already been committed to investigating these matters and expenditure has been incurred, for the reasons stated in the report, in order to resolve the matters raised and respond to the building complaints.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement & Consequence	Level of Risk	Risk Treatment
Council or a committee of Council undertaking tasks and functions that are not lawful.	High	Council to acknowledge the petition and for the administration to resolve the building related matters and complaints.

M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A HARRIS STREET, BICTON (REC)

POLICY IMPLICATIONS

Councils Compliance and Enforcement Policy CP-114 outlines the City's approach to undertaking compliance and enforcement actions.

The Code of Conduct Elected Members, Committee Members and Candidates describe:

18. Securing personal advantage or disadvantaging others

- (1) A council member must not make improper use of their office -*
- (a) to gain, directly or indirectly, an advantage for the council member or any other person; or*
- (b) to cause detriment to the local government or any other person.*

In this respect the petition requests that complaints be resolved to the satisfaction of the complainant/petitioner, which may not be the case.

19. Prohibition against involvement in administration

- (1) A council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or the CEO to undertake that task.*
- (2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

There are various options relating to how the building matters and complaints are resolved however, the administration is not proposing any alternative options for dealing with the petition or the specific requests made in the petition at this time.

CONCLUSION

This report considers the petition presented and refers to the building issue that is the subject of the petition. City officers have been and are investigating the building matters and complaints, which are nearing resolution. It is proposed that a presentation on the issues and findings will be made to Elected Members at an Elected Members Engagement Session, prior to the owners of 89A Harris Street and 6B First Street being advised further of the City's position.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

OFFICER RECOMMENDATION

APPROVAL

That the Council:

- 1. Notes the Officer Report on the petition signed by 24 residents received from Dr Stevens on 20 February 2023 requesting the Council investigate and resolve his building complaints; and**
- 2. Advise Dr Steven’s that the actions requested of the Council within the petition are inconsistent with the governance role and functions of the Council and that the City’s administration will continue to progress with current actions regarding the 89A Harris Street and 6B First Street, Bicton building related matters and complaints and that the best course of action is that these matters be resolved amicably between both property owners.**

Corporate Services

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

Ward : All
 Category : Operational
 Subject Index : Financial Statements and Investments
 Customer Index : Not applicable
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Standard Item
 Works Programme : Not applicable
 Funding : Not applicable
 Responsible Officer : Debbie Whyte
 Manager Financial Services

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input checked="" type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

This report presents the investment statements for the period ending 28 February 2023 for the Council's information and noting.

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

BACKGROUND

The City has cash holdings as a result of timing differences between the collection of revenue and its expenditure. Whilst these funds are held by the City they are invested in appropriately rated and liquid investments.

The investment of cash holdings is undertaken in accordance with Council Policy CP-009 - Investment of Funds, with the objective of maximising returns whilst maintaining low levels of credit risk exposure.

DETAIL

The following statement details the investments held by the City as at 28 February 2023.

CITY OF MELVILLE STATEMENT OF INVESTMENTS FOR THE PERIOD ENDING 28 FEBRUARY 2023		
SUMMARY BY FUND		
Municipal		\$55,580,081
Reserve		\$143,238,104
Trust		\$-
Citizen Relief		\$224,848
TOTAL		\$199,043,033
SUMMARY BY INVESTMENT TYPE		
11AM		\$19,319,731
31Days at Call		\$-
60Days at Call		\$2,000,000
90Days at Call		\$16,600,000
Term Deposit		\$161,123,302
TOTAL		\$199,043,033
SUMMARY BY CREDIT RATING		
AAA Category	AAA	
AA Category (AA+ to AA-)	AA-	\$114,300,272
A Category (A+ to A-)	A+	\$41,742,761
	A	
	A-	
BBB+ Category	BBB+	\$43,000,000
TOTAL		\$199,043,033

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

Exposure to an individual institution is limited according to Council policy and in February 2023 the investments were within the acceptable limits.

Investment with financial institutions						
Institution	Credit Rating	Credit Rating Category	Funds held at period end	Actual %	Limit Per Policy	
ANZ	AA-	AA Category	\$ 3,200,000	1.61%	30.00%	✓
AMP	BBB+	BBB+ Category	\$ -	0.00%	15.00%	✓
Bankwest	AA-	AA Category	\$ -	0.00%	30.00%	✓
Bank of Queensland	BBB+	BBB+ Category	\$ 25,000,000	12.56%	15.00%	✓
ING Bank	A-	A Category	\$ -	0.00%	25.00%	✓
Bendigo & Adelaide	BBB+	BBB+ Category	\$ 18,000,000	9.04%	15.00%	✓
CBA	AA-	AA Category	\$ 24,000,000	12.06%	30.00%	✓
Macquarie	A+	A Category	\$ 2,042,761	1.03%	25.00%	✓
NAB	AA-	AA Category	\$ 52,758,712	26.51%	30.00%	✓
St George	AA-	AA Category	\$ -	0.00%	30.00%	✓
Suncorp	A+	A Category	\$ 39,700,000	19.95%	25.00%	✓
Westpac	AA-	AA Category	\$ 34,341,560	17.25%	30.00%	✓
TOTAL			\$ 199,043,033	100%		

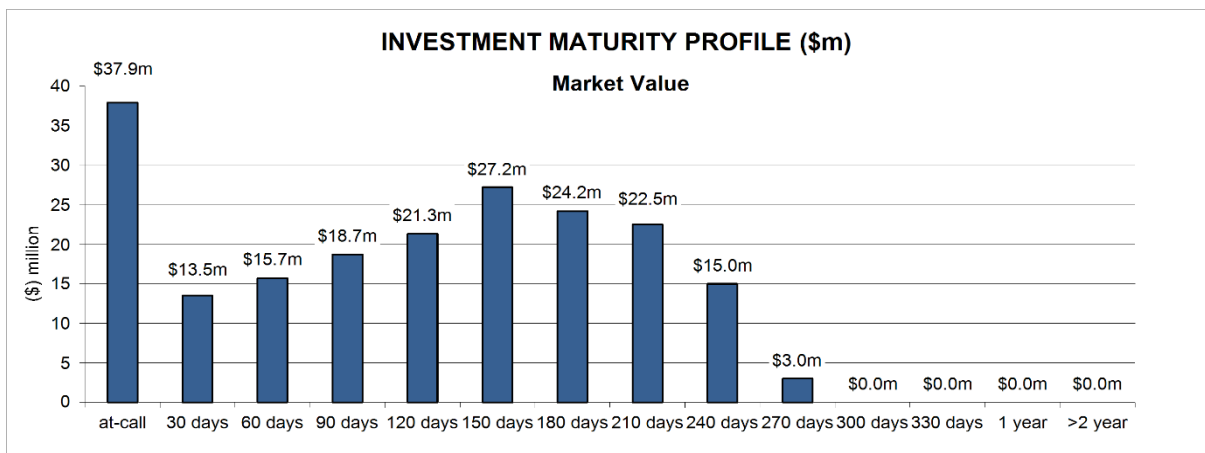
*Standard & Poor's ratings. Source: Policy No. CP-009: Investment of Funds

The City's investments were invested within the limits allowed within each category rating for February 2023.

Maximum Percentage of Average Investment Portfolio Balance				
Long Term Rating	Funds held at period end \$	Actual %	Limit Per Policy	
AAA Category	\$ -	0%	100%	✓
AA Category (AA+ to AA-)	\$ 114,300,272	57%	80%	✓
A Category (A+ to A-)	\$ 41,742,761	21%	50%	✓
BBB+ Category	\$ 43,000,000	22%	25%	✓
TOTAL	\$ 199,043,033	100%		

*Standard & Poor's ratings. Source: Policy No. CP-009: Investment of Funds

The below graph summarises the maturity profile of the City's investments at market value as at 28 February 2023. The immediacy of the demand for funds depends on the particular Fund or Reserve Account(s) of the City. The maturity profile provided in the table above meets the liquidity requirements of the Council policy.



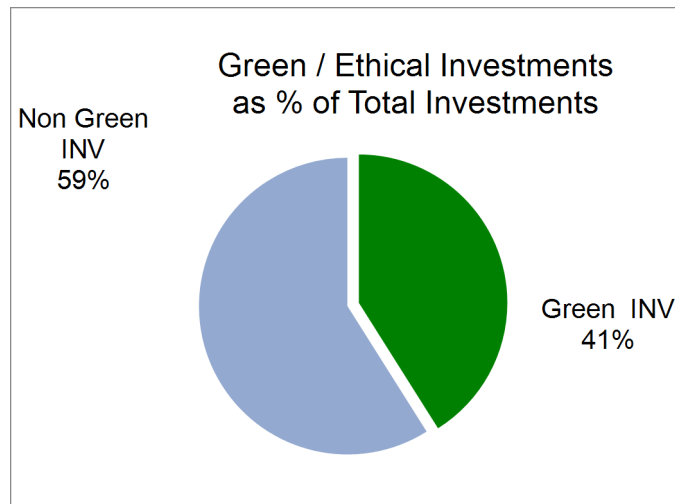
C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

The City exercises a deliberative preference in favour of green/ethical investments. This preference will however only be exercised after the foremost investment considerations of credit rating, comparable rate and risk diversification are fully satisfied.

“Green investments” are authorised investment products made in authorised institutions that respect the environment by not investing in fossil fuel industries.

Environmental, Social & Governance Term Deposit (ESGTD) is a similar product to Green investments. ESGTD’s provide the opportunity to invest in products that seek to mitigate environmental and social risks.

The total investment in authorised institutions as at 28 February 2023 was \$81,700,000 or 41% of total investment holdings being in non-fossil fuels institutions, compared to \$86,700,000 (43%) in January 2023. The total investments holding for February and January were \$199,043,033 and \$202,814,229 respectively.



Green / Ethical Investment with financial institutions			
Institution	Credit Rating	Credit Rating Category	Funds held at period end
Bendigo & Adelaide	BBB+	BBB+ Category	\$ 18,000,000
CBA	AA-	AA Category	24,000,000
Suncorp	A+	A Category	\$ 39,700,000
TOTAL			\$ 81,700,000

Green investments are invested in the three banks listed above, in accordance with the council credit rating policy. CBA and Suncorp are unable to accept new money or process rollovers of Green /Ethical Investments which will be withdrawn in future.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

This report is available to the public on the City’s website.

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

II. OTHER AGENCIES / CONSULTANTS

A wide range of suitably credit rated Authorised Deposit-taking Institutions (ADI's) were engaged with during the course of the month in respect to the placement and renewal of investments.

STATUTORY AND LEGAL IMPLICATIONS

The following legislation is relevant to this report:

- *Local Government (Financial Management) Regulations 1996* Regulation 19 – Management of Investments
- *Trustee Act 1962* (Part 3)

Authorised Deposit-taking Institutions are authorised under the *Banking Act 1959* and are subject to Prudential Standards oversight by the Australian Prudential Regulation Authority (APRA).

The *Local Government (Financial Management) Regulations 1996* (regulation 19C) allows local governments to deposit funds for a fixed term of three years or less. Deposits of greater than one year may, depending on the shape of the yield curve, enable the City to achieve better investment returns.

FINANCIAL IMPLICATIONS

For the period ending 28 February 2023:

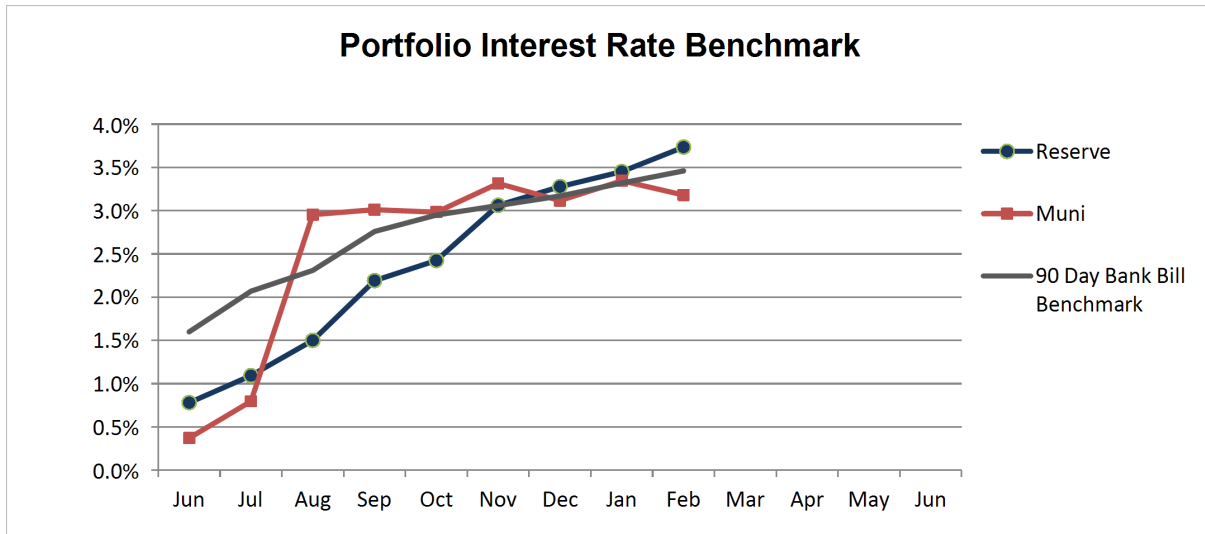
- Investment earnings on Municipal Funds was \$1,229,018 against a year to date budget of \$1,230,000 representing a negative variance of \$982.

The weighted average interest rate for Municipal Fund investments as at 28 February 2023 was 3.18% which compares unfavourably to the benchmark three month bank bill swap (BBSW) reference rate of 3.46%.

- Investment earnings on Reserve accounts were \$2,604,284 against a year to date budget of \$2,605,000 representing a negative variance of \$716.

The weighted average interest rate for Reserve account investments as at 28 February 2023 was 3.74% which compares favorably to the benchmark three month bank bill swap (BBSW) reference rate of 3.46%.

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)



STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Strategic

The interest earned on invested funds assists in addressing the following key priority area identified in The City of Melville Corporate Business Plan 2020-2024.

Priority Number One – “Restricted current revenue base and increasing/changing service demands impacts on rates”.

Risk

The Council’s Investment of Funds Policy CP-009 was drafted so as to minimise credit risk through investing in highly rated securities and diversification. The Policy also incorporates mechanisms that protect the City’s investments from undue volatility risk as well as the risk to reputation as a result of investments that may be perceived as unsuitable by the Community.

Environmental

When investing the City’s funds, a deliberative preference will be made in favour of authorised institutions that respect the environment by not investing in fossil fuel industries. This preference will however, only be exercised after the foremost investment considerations of credit rating, risk diversification and interest rate return are fully satisfied.

POLICY IMPLICATIONS

Council Policy CP-009 – Investment of Funds provides guidelines with respect to the investment of City of Melville (the City) funds by defining levels of risk considered prudent for public monies. Liquidity requirements are determined to ensure the funds are available as and when required and take account of appropriate benchmarks for rates of return commensurate with the low levels of risk and liquidity requirements. The types of investments that the City has the power to invest in is limited by prescriptive legislative provisions governed by the *Local Government Act 1995*, *Local Government (Financial Management) Regulations 1996* and Part III of the *Trustees Act 1962*.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable as this report only presents information for noting.

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

CONCLUSION

The City's investment portfolio is invested in highly secure investments with a low level of risk yielding a weighted average rate of return of 3.18% to 3.74% which is on par with the benchmark three month bank bill swap (BBSW) reference rate of 3.46%.

41% of the City's investment portfolio is invested in authorised deposit taking institutions that do not lend to industries engaged in the exploration for, or production of, fossil fuels. This compared to 43% in January 2023.

Future investment earnings will be determined by the cash flows of the City and movements in interest rates on term deposits.

OFFICER RECOMMENDATION (6000)

NOTING

That the Council notes the Investment Report for the period ending 28 February 2023.

C23/6001 – SCHEDULE OF ACCOUNTS PAID FOR FEBRUARY 2023 (REC) (ATTACHMENT)

Ward : All
 Category : Operational
 Subject Index : Financial Statement and Investments
 Customer Index : Not applicable
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Standard Item
 Works Programme : Not Applicable
 Funding : Annual Budget
 Responsible Officer : Debbie Whyte
 Manager Financial Services

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that September be appealable to the State Administrative Tribunal.</i>
<input checked="" type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

This report presents the details of payments made under delegated authority to suppliers for the period of February 2023 and recommends that the Schedule of Accounts Paid be noted.

C23/6001 – SCHEDULE OF ACCOUNTS PAID FOR FEBRUARY 2023 (REC) (ATTACHMENT)

BACKGROUND

Delegated Authority DA-035 has been granted to the Chief Executive Officer to make payments from the Municipal and Trust Funds. This authority has then been on-delegated to relevant senior officers. In accordance with Regulation 13.2 and 13.3 of the *Local Government (Financial Management) Regulations 1996*, where this power has been delegated, a list of payments for each month is to be compiled and presented to the Council.

A total of \$8,180,815 direct creditor payments were paid during the month, of which, 27% of payments were paid to suppliers located within the City of Melville and 32% to suppliers within the South-West Group, compared to 23% and 31% of total of \$8,059,173 direct creditor payments made over January 2023 respectively.

The largest payment of \$1,251,699 made during the month was for FOGO, gate fees and overheads payment to the Resource Recovery Group (RRG). Approximately 95% of supplier invoices are paid within 30 days of receipt of the invoices.

The list of payment is to show each payment, payee name, amount and date of payment and sufficient information to identify the transaction.

DETAIL

The Schedule of Accounts Paid for February including Payment Register numbers, Cheques: 836-837, Electronic Funds Transfers batches: 817-820, Trust Payments, Card Payments and Payroll was distributed to the Elected Members of the Council on 31 March 2023.

The below table details the Summary of Payments Made for the period:

SCHEDULE OF PAYMENTS MADE FEBRUARY 2023		
<i>Payments made under Delegated Authority DA-035</i>		
MUNICIPAL FUNDS - DIRECT CREDITOR PAYMENTS		
Cheques	Chq Payment Register No. 836 and 837	\$311.00
	Chq Payment on Restricted Funds Register No.	\$0.00
	Less Cancelled Chqs	(\$977.85)
Electronic Funds Transfers	EFT Payment Register No. 818 and 820	\$7,280,232.26
	EFT Payment on Restricted Funds Register No. 817,819 and 129	\$755,411.24
	Less Cancelled EFTs	-
	\$8,034,976.65	
Direct Debits	Bank Fees	\$18,606.71
	Ampol Fuel	\$106,192.24
Direct Payments		\$21,039.85
	Total Direct Creditor Payments	\$8,180,815.45
Payroll	Total Pay 16 and 17	\$4,016,223.12
	Total Payroll	\$4,016,223.12
Cards	Westpac Corporate Cards	\$3,209.92
	Westpac Purchase Cards	\$79,619.01
	American Express	\$3,487.87
	Total Card Payments	\$86,316.80
Total Direct Creditor Payments from Municipal Account		\$12,283,355.37

C23/6001 – SCHEDULE OF ACCOUNTS PAID FOR FEBRUARY 2023 (REC) (ATTACHMENT)

Schedule of Payments Made continued.

INTERFUND & INVESTMENT TRANSACTIONS			
<i>Interfund Transfers</i>			
Loan			\$0.00
Citizen Relief Trust			\$0.00
Citizen Relief Operating			\$0.00
Municipal			(\$6,000,000.00)
Reserve			\$6,000,000.00
Trust			\$0.00
<i>Total Interfund Transfers</i>			\$0.00
<i>New Municipal Investments</i>			
Westpac Bank	2/02/2023		\$1,300,000.00
Westpac Bank	6/02/2023		\$600,000.00
Westpac Bank	8/02/2023		\$700,000.00
Westpac Bank	10/02/2023		\$1,000,000.00
Westpac Bank	17/02/2023		\$3,100,000.00
Westpac Bank	21/02/2023		\$1,000,000.00
Westpac Bank	24/02/2023		\$1,700,000.00
<i>Total New Investments</i>			\$9,400,000.00
Grand Total			\$21,683,355.37

Details of the payments are shown in attachment [6001 Payment Details February 2023](#).

Any payment over and above \$25,000.00 has been highlighted under the Payment Amount column in the attachment to this statement named 'Listing of Payments made under Delegated Authority'.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Not applicable.

II. OTHER AGENCIES / CONSULTANTS

STATUTORY AND LEGAL IMPLICATIONS

This report meets the requirements of the *Local Government (Financial Management) Regulations 1996* Part 2: General financial management (s.6.10) regulations 11, 12 & 13.

FINANCIAL IMPLICATIONS

Expenditures were provided for in the adopted Budget as amended by any subsequent Budget reviews and amendments.

C23/6001 – SCHEDULE OF ACCOUNTS PAID FOR FEBRUARY 2023 (REC) (ATTACHMENT)

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

There are no identifiable strategic, risk and environmental management implications.

POLICY IMPLICATIONS

Procurement of Products and Services is conducted in accordance with Council Policy CP-023 and Systems Procedure 019 Purchasing and Procurement.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable as this report presents information for noting only.

CONCLUSION

The Schedule of Payments for the month totals \$ 21,683,355 .

The report and the attached Schedule of Accounts Paid are presented for the Council's information.

OFFICER RECOMMENDATION (6001)

NOTING

That the Council notes the Schedule of Accounts paid for the period February 2023 as approved by relevant officers in accordance with delegated authority DA-035, and detailed in attachment [6001 Payment Details February 2023](#).

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

Ward : All
 Category : Operational
 Subject Index : Financial Reporting - Statements of Financial Activity
 Customer Index : Not applicable
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Standard Item
 Works Programme : Not applicable
 Funding : Not applicable
 Responsible Officer : Debbie Whyte
 Manager Financial Services

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
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<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

<p>This report presents:</p> <ul style="list-style-type: none"> • The Statements of Financial Activity by Nature or Type and Rate Setting Statement by Program and Nature or Type, for the period ending 28 February 2023 and recommends that they be noted by the Council. • The variances for the month of 28 February 2023 and recommends that they be noted by the Council. • The Budget amendments required for the month of 28 February 2023 and recommends that they be adopted by Absolute Majority decision of the Council.

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

BACKGROUND

The Statements of Financial Activity for the period ending 28 February 2023 have been prepared and tabled in accordance with the *Local Government (Financial Management) Regulations 1996*.

OVERALL SUMMARY OF THE CITY'S FINANCIAL POSITION

- The City's total investments holding for February were \$199.04m of which the Municipal cash balance at the end of the month was \$55.5m and \$143.2m was held in reserve accounts, which are restricted to the defined purpose for which the reserve account was established.
- The investment in green/ethical term deposits as at 28 February was \$81.7m or 41% of total investment holdings, compared to \$86.7m (43%) in January 2023.
- The Reserve Bank of Australia (RBA) board raised the cash rate by 25 basis points in March, to its current level of 3.60%, and with the RBA still aiming to get inflation under control, it is likely we have not seen the end of the rate hikes yet. With inflation still rising and the cash rate forecast unclear, some senior economists are predicting that the cash rate may climb as high as 4.10% by mid-2023. However, interest rates on savings and term deposit products could drop during the next 6 months due to mortgage pressure.
- The 2022-2023 Rates generated to 28 February totalled \$96.27m, \$0.104m higher than budgeted due to interim adjustments in respect to both Commercial and Residential improved properties.
- Total debtor collections for February 2023 equalled \$5.98m. The Rates collection target was 85.8% and the actual collection is tracking slightly higher at 86.6%, compared to 86.7% for the same period in 2021-2022. The total outstanding debtors (including all rates and sundry debtors) is \$17.72m as of 28 February 2023.

DETAIL

The attached reports have been prepared in compliance with the requirements of the legislation and Council policy. The three monthly reports that are presented are the:-

1. Statement of Financial Activity by Nature and Type
Provides details on the various categories of income and expenditure.
2. Rate Setting Statement by Program
Provides details on the Program classifications.
3. Rate Setting Statement by Nature or Type
Provides details on the Nature or Type classifications.

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

Variances

A detailed summary of variances and comments based on the Rate Setting Statement by Nature or Type is provided in attachments:

[6002B Statement Nature Type February 2023](#): Rate Setting Statement by Nature or Type
[6002H Statement of Variances February 2023](#): Statement of Variances in Excess of \$100,000

Revenue

Rates raised as at 28 February were \$96,271,236, compared to a year to date budget of \$96,166,913. The positive variance of \$104,324 is due to interim adjustments in respect to both Commercial and Residential improved properties.

Rates Collection

SUMMARY OF RATE DEBTOR MOVEMENT					
Detail	Actuals Current Month YTD	Actuals Previous Month YTD	% Diff Current Mth to Previous Mth	Actuals This Month Last Year YTD	% Diff Current Mth to Current Mth Last Yr
Opening Balance - 1 July	5,453,565	5,453,565	0%	6,491,862	-16%
Debtors Raised	120,152,851	120,021,213	0%	118,458,117	1%
Payments Received	(108,587,778)	(103,255,795)	5%	(107,291,544)	1%
Closing Balance	17,018,638	22,218,983	-23%	17,658,435	-4%

Total rate debtor collections for the month equalled \$5,331,983.

Sundry Debtor Movement

SUMMARY OF SUNDRY DEBTOR MOVEMENT					
Detail	Actuals Current Month YTD	Actuals Previous Month YTD	% Diff Current Mth to Previous Mth	Actuals This Month Last Year YTD	% Diff Current Mth to Current Mth Last Yr
Opening Balance - 1 July	642,878	642,878	0%	882,151	-27%
Invoices Raised	5,168,768	4,800,433	8%	4,407,745	17%
Receipts	(5,118,322)	(4,461,500)	15%	(4,568,896)	12%
Prepayments	9,877	10,835	-9%	(32,602)	-130%
Closing Balance	703,200	992,647	-29%	688,398	2%

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

Sundry debtor balances decreased by \$289,446 over the course of February from \$992,647 to \$703,200 of which total 90-day sundry debtors over \$1,000 for the month is \$155,689, representing 22% of total sundry debtors.

Money Expended in an Emergency and Unbudgeted Expenditure

Not applicable for February 2023.

Budget Amendments

Details of Budget Amendments requested for the month of February 2023 that reflect effective changes to budgets are shown in attachment [6002J Budget Amendments February 2023](#). Budget amendments that are purely administrative and detail movements between budget responsible officers are not included in the attachment. This reporting is aligned with legislative requirements.

Variances greater than \$100,000 processed in February 2023 are highlighted in the attachment.

Granting of concession or writing off debts owed to the City

Delegation DA-032 empowers the Chief Executive Officer (CEO) to grant concessions and write off monies owing to the City to a limit of \$10,000 for any one item. The CEO has partially on-delegated this to the Director Corporate Services to write off debts or grant concessions to a value of \$5,000.

Sundry Debtors

There were no sundry debts written off for the month of February.

Rate Debtors

An amount of \$318.61 was written off due to an incorrect account balance given to customer at time of settlement.

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

The following attachments form part of the attachments to the Agenda for the month of February 2023.

DESCRIPTION	LINK
Statement of Financial Activity By Nature or Type	6002A Statement Nature Type February 2023
Rate Setting Statement by Program	6002B Rate Setting Program February 2023
Rate Setting Statement by Nature or Type	6002B Rate Setting Nature Type February 2023
Representation of Net Working Capital	6002E Net Working Capital February 2023
Reconciliation of Net Working Capital	6002F Reconciliation Net Working Capital February 2023
Notes on Rate Setting Statement reporting on variances of 10% or \$100,000 whichever is greater	6002H Notes Rate Setting Statement February 2023
Details of Budget Amendments requested	6002J Budget Amendments February 2023
Summary of Rates Debtors	6002L Summary Rate Debtors February 2023
Graph Showing Rates Collections	6002M Rates Collections Graph February 2023
Summary of General Debtors aged 90 Days Old or Greater	6002N General Debtors Aged 90 Days February 2023

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Not applicable.

II. OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Local Government Act 1995 Division 3 – Reporting on Activities and Finance Section 6.4 – Financial Report.

Local Government (Financial Management) Regulation 1996 Part 4 – Financial Reports Regulation 34 requires that:

34. Financial activity statement report — s. 6.4

(1) A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail —

- (a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);
- (b) budget estimates to the end of the month to which the statement relates;

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

- (c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;*
 - (d) material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
 - (e) the net current assets at the end of the month to which the statement relates.*
- (2) Each statement of financial activity is to be accompanied by documents containing —*
- (a) an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;*
 - (b) an explanation of each of the material variances referred to in subregulation (1)(d); and*
 - (c) such other supporting information as is considered relevant by the local government.*
- (3) The information in a statement of financial activity may be shown —*
- (a) according to nature and type classification; or*
 - (b) by program; or*
 - (c) by business unit.*
- (4) A statement of financial activity, and the accompanying documents referred to in sub-regulation (2), are to be —*
- (a) presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and*
 - (b) recorded in the minutes of the meeting at which it is presented.*
- (5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.*

The variance adopted by the Council is 10% or \$100,000 whichever is greater.

Local Government Act 1995 Division 4 – General Financial Provisions Section 6.12; Power to defer, grant discounts, waive or write off debts.

FINANCIAL IMPLICATIONS

Variances

Variances are detailed and explained in attachment [6002H Notes Rate Setting Statement February 2023](#): Notes on Statement of Variances in excess of \$100,000 by Nature or Type.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

The impact of Covid-19 on the services provided by the City, the health of the city employees and community itself as well as the financial impacts on the City, State and Federal economy is a significant strategic risk. The City has well developed business continuity plans in place and has enacted the Incident Response Team (IRT) to coordinate and plan the City's response to the Covid-19 crisis.

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

POLICY IMPLICATIONS

The format of the Statements of Financial Activity as presented to the Council and the reporting of significant variances is undertaken in accordance with the Council’s Accounting Policy CP-025.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable

CONCLUSION

The attached financial reports reflect a positive financial position of the City of Melville as at 28 February 2023.

OFFICER RECOMMENDATION (6002)

NOTING and ABSOLUTE MAJORITY

That the Council:

- Notes the Rate Setting Statement and Statements of Financial Activity for the month ending 28 February 2023 as detailed in the following attachments:**

DESCRIPTION	LINK
Statement of Financial Activity By Nature or Type	<u>6002A Statement Nature Type February 2023</u>
Rate Setting Statement by Program	<u>6002B Rate Setting Program February 2023</u>
Rate Setting Statement by Nature or Type	<u>6002B Rate Setting Nature Type February 2023</u>
Representation of Net Working Capital	<u>6002E Net Working Capital February 2023</u>
Reconciliation of Net Working Capital	<u>6002F Reconciliation Net Working Capital February 2023</u>
Notes on Rate Setting Statement reporting on variances of 10% or \$100,000 whichever is greater	<u>6002H Notes Rate Setting Statement February 2023</u>
Details of Budget Amendments requested	<u>6002J Budget Amendments February 2023</u>
Summary of Rates Debtors	<u>6002L Summary Rate Debtors February 2023</u>
Graph Showing Rates Collections	<u>6002M Rates Collections Graph February 2023</u>
Summary of General Debtors aged 90 Days Old or Greater	<u>6002N General Debtors Aged 90 Days February 2023</u>

- By Absolute Majority Decision adopts the budget amendments, as detailed in the attached Budget Amendment Reports for February 2023 [6002J Budget Amendments February 2023](#).**

Community Development

Nil.

Environment and Infrastructure

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Ward : All
 Category : Operational
 Subject Index : Animal Control
 Customer Index : Environment and Infrastructure
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Item 15.5 Corella Management Plan - Ordinary Meeting of Council held 13 December 2022
 Works Programme : Not Applicable
 Funding : Operational \$25,000
 Responsible Officer : Jeff Bird
 Manager Natural Areas & Parks

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g., adopting plans and reports, accepting tenders, directing operations, setting, and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g., under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

- At the Ordinary Meeting of Council held 13 December 2022, the Council requested that a plan be prepared to effectively manage the Little Corella and/or Eastern Long-billed Corella population in the vicinity of Morris Buzzacott Reserve and in other locations deemed necessary across the City.
- An Elected Members Engagement Session took place on 28 February 2023 to discuss the background around this issue and the options available.
- This report presents the options available to the Council and recommends a combined approach involving community education, working with the State Government and City managed control.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

BACKGROUND

At the Ordinary Meeting of Council held 13 December 2022, the Council resolved to:

- “1. Prepare a plan for effectively managing the Little Corella and/or Eastern Long-billed Corella population in the vicinity of Morris Buzzacott Reserve and in other locations deemed necessary across the City. Officers’ proposal(s) are to be workshopped at an Elected Members Engagement Session prior to a report and suitable recommendation being presented to an Ordinary Meeting of the Council prior to the end of April 2023.*
- 2. Acknowledging Western Australian Local Government Association’s, (WALGA) view that a collaborative, regional approach is most effective and efficient in controlling Corella numbers and that such an approach should be led by the State Government (specifically the Department of Primary Industries and Regional Development (DPIRD) and Department of Biodiversity, Conservation and Attractions (DBCA), in collaboration with Local Governments), lobby the State Government to take the lead in continuing to work towards the development of a state-wide Corella control program.”*

The reasons provided in support of the motion were:

1. The Eastern Long-billed Corella (*Cacatua tenuirostris*) is now well established around Perth and on the southerly Swan Coastal Plain to Busselton. This introduced species (derived from aviary escapees around Perth) is a major threat to our endemic Corellas and Black Cockatoos. The Eastern Long-Billed Corella poses an environmental threat to our endemic Black Cockatoos by out-competing for nest sites, their ability to remove eggs from the nest hollow and to kill and maim advanced nestlings. There is now urgent management needed in the Perth region and on the Swan Coastal Plain to control this introduced pest species.
2. The Melville City Hockey Club, (MCHC) is one of the largest sporting clubs within the City and is required to self-fund the replacement of its artificial surface every seven to eight years. Over the summer of 2021-2022 the MCHC spent \$500,000 of its own funds on a brand-new surface and associated underlay and within weeks of its installation, the Corellas had caused damage to the surface.
3. Attempts by the Club to deter or ‘move on’ the Corellas at a cost of circa \$30,000, plus countless hours of volunteer labour, have to date been unsuccessful. It is estimated that on top of the damage to the turf, \$4,000 per annum is spent on repairing infrastructure surrounding the turf that has also been destroyed by these birds. This figure does not include the additional \$80,000 associated with the premature deterioration of the turf caused by the Corellas and hence its earlier than normal replacement cycle.
4. These birds are a declared pest and are causing significant damage to a wide number of City of Melville assets, with this being just one example. The City has a responsibility to ensure its clubs can continue to operate efficiently and effectively, so it is deemed appropriate to attempt to manage the negative impact this species of Corella is having.
5. A collaborative, regional approach is most effective and efficient in controlling Corella numbers. Informed by experience with the Coordinated Corella Control Program, WALGA considers such an approach should be led by the State Government, specifically the DPIRD and DBCA, in collaboration with Local Governments.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

6. Despite concern at the limited effectiveness of Corella control programs undertaken by other local governments, there has been success. The City of Bunbury has a Corella Management Strategy. Culling resulted in a decrease in ratepayer and resident requests regarding the birds.

DETAIL

There are two species of Corellas - the Little Corella and the Eastern Long Billed Corella that are both considered pest birds in the Perth region. The Little Corella's natural range is in the northern parts of Western Australia including the Pilbara and Kimberley regions. The Eastern Long Billed Corella's natural range is eastern Australia.

Below are some of the impacts increased Corella populations can have:

- Competition for habitat with endemic fauna including the endangered black cockatoo.
- Damage to trees, (defoliation and bark stripping) affecting tree health and contributing to decline.
- Infrastructure damage, (electrical wiring, signage, furniture, buildings).
- Turf damage both natural and synthetic.
- Noise from roost sites near residential properties.
- Fouling of private buildings or public places.

In reviewing our customer requests over the past 5 years, we have determined that many complaints about Corellas relate to residents feeding and attracting birds.

E123/4013 – CORELLA MANAGEMENT PLAN (REC)

Summary of Complaints		
	No. of Complaints	Location
Numbers	4	Cnr Leach Highway & Winthrop Road, Winthrop
	2	Deep Water Point, Mount Pleasant
	2	Quarantine Park, Bicton
	2	Morris Buzzacott Reserve
	1	Patterson Place, Myaree
	1	Saw Road, Kardinya
	1	Ardross Street, Applecross
Total	13	
Feeding	3	Rowney Close, Bateman
	2	Latham Street, Alfred Cove
	2	Canning Highway, Melville
	2	Hatherley Parade, Winthrop
	1	Davies Crescent, Kardinya
	1	Jefferies Way, Leeming
	1	Harfoot Street, Willagee
	1	Forrest Street, Palmyra
	1	Ripple Way, Bateman
	1	Hodgson Place, Kardinya
	1	Ryan Court, Bull Creek
	1	Petterson Avenue, Kardinya
	1	Harvey Crescent, Kardinya
	1	Bowles Court, Murdoch
	1	Eckersley Heights, Winthrop
	1	Kent Street, Bicton
1	Solomon Street, Palmyra	
Total	22	

In summary, most complaints about Corellas relate to residents feeding and attracting birds with flocks located in residential areas and streets; drawn there by the provision of feed by the residents. Two complaints were received in relation to damage caused to assets, including the MCHC turf complaint.

Previous City Involvement

The City has investigated several options relating to pest birds over the years, noting that the City is not currently undertaking any pest bird control.

In 2011-2012, the City took part in the regional program funded by DBCA which involved culling of the Corellas at Point Walter Golf Course. This process involved setting up a feeding station, then once a month capturing the birds with a net and shooting them. Several hundred birds were culled, however the program stopped after five months due to funding being withdrawn by the State and the fact that the program was not considered effective by City officers in terms of effectiveness in controlling the widespread Corella population.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Complaints were also received from those using the course about the culling when it took place and the damage the birds were doing to the turf. It is interesting to note that Corella numbers have dropped at Point Walter since that time, and the birds are not considered a problem today at the golf course. This could be an indication of the birds being intelligent enough to realise that culling was taking place and they moved on, however moving them on is not solving the problem and why a regional approach is preferred.

The City also previously contributed \$5,000 per year to the WALGA Pest Bird Portal (online reporting), which was used to track regional numbers and movements but unfortunately this program was discontinued several years ago.

On 31 March 2022, the City advised that it had no concerns with the Melville City Hockey Club engaging with a licenced Contractor to undertake culling of the Corellas that were impacting hockey infrastructure at Morris Buzzacott Reserve.

On 6 April 2022, the Club advised that a culling trial was carried out by the club on 4 April 2022 with limited impact, which is not unexpected as the management of Corellas is a longer term issue requiring a coordinated approach and ongoing resourcing.

DPIRD Strategy

The Department of Primary Industries and Regional Development (DPIRD) is currently developing a Pest Parrot and Cockatoo Management Strategy for Western Australia, to help guide stakeholders in the effective management of pest birds. Birds of interest in the survey include Corellas as well as several other pest birds such as the Rainbow lorikeet, Sulphur-crested cockatoo, Indian ringneck parakeet, Alexandrine parakeet and Galah.

The strategy will address key issues including:

- Roles and responsibilities across governments and landholders;
- The need for an integrated and coordinated approach;
- Establishing and setting priorities; and
- Funding.

DPIRD has engaged Strickland Park Economics to assist with the development of the strategy to guide the future management of these pest bird species. An important part of this work is a survey of public attitudes to the control of birds as pests, in particular declared pest parrots and cockatoos.

According to DPIRD, information on the public's understanding of these birds, and how they should be managed, is fundamental to the development of the strategy.

To assist with gaining an understanding, DPIRD sought input from all stakeholders and the Western Australian community earlier this year to provide an understanding of experiences with pest birds and expectations regarding future control efforts throughout Western Australia. Consultation closed on 31 March 2023, with the strategy expected to be completed in late 2023.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Preferred Future Management Approach

In light of the above and in response to Council's request to develop a plan to manage Corellas, the City has developed the following staged approach methodology.

Phase 1 - Engagement and Education

Given most complaints relate to neighbours feeding and attracting Corellas, the City is proposing to develop and implement a community education campaign to discourage feeding. A key part of that messaging will focus on bringing to the community's attention that feeding wildlife is illegal under the Biodiversity Conservation Act 2016 and can attract fines up to \$20,000. The City will also investigate developing a process where DBCA is informed of the feeding incidents as they occur so that they can take action through engagement with residents.

Phase 2 – City Managed Control

The City is in the process of renewing the Contract for Feral Animal Control in the City. The specifications now include control methods for Corellas and other pest birds.

The contractors who undertake feral animal control for the City are all qualified environmental consultancies that specialise in working with terrestrial vertebrate fauna and undertaking feral and pest control management across Western Australia. They are also able to undertake fauna surveys, fauna assessments, fauna relocation and fauna management. Key staff are all very experienced within the industry and regularly research and publish findings and present at industry conferences. All contractors that the City work with are well placed to provide the City with expert advice when dealing with Corellas and other species that may require management.

Control Methodology

Control will be on a site-by-site basis and several factors need to be assessed before control measures are implemented such as extent of damage being caused to infrastructure and tree assets, health concerns, threats to biodiversity, nuisance and other impacts.

The steps proposed to be put in place to undertake Corella control are (in order):

- a) Contractor engaged to undertake a site assessment and recommend a control program for Corellas on a site specific, ad-hoc basis and as requested by the City.
- b) The use of non-lethal methods will be the preferred approach and should be investigated first and to include measures such as scaring or using decoys to disturb a roost or feeding site.
- c) Corella control using pre-baiting, netting, and shooting in an area away from the public eye where possible, and as per DBCA guidelines, may be undertaken once non-lethal measures have been deemed unsuccessful or not appropriate. If lethal control is considered the only available option and is not able to be undertaken away from the public eye, the City will need to advise local users of the space where the culling activity is to occur and ensure that the area is restricted and cleared of persons. We will need to be clear in our communication that the culling process may be confronting to the community if witnessed.
- d) Use of control methods other than those above may be suggested by the Contractor for use, however, will need to be approved by the City prior to use.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Phase 3 - DPIRD Involvement

The City will be guided by the Department of Primary Industries and Regional Development Pest Parrot and Cockatoo Management Strategy for Western Australia as well as DPIRD advice as the responsible agency. Once a control strategy is finalised and agreed measures identified, the City will take part in any actions required as land managers.

STAKEHOLDER ENGAGEMENT

The Cities of Bunbury and Rockingham both have active control programs. The City of Bunbury provided the following information when conducting a review of the strategy.

“Through its experiences to date in undertaking introduced Corella management, the City has become aware of several key constraints that have the potential to pose a significant impediment to effective corella management including:

- *current lack of experienced and equipped introduced corella control contractors*
- *limited availability of secure and unimpeded control sites*
- *lack of diversity of control methods*
- *limited participation by and coordination across key stakeholders*
- *limited resources considering the magnitude of the problem.”*

The City of Rockingham advised that it is committed to continuing with ongoing Corella control but raise the point that this is a wide scale problem that needs a regional approach and support across the metro and southwest to reduce environmental impacts.

STATUTORY AND LEGAL IMPLICATIONS

All Australian fauna, including Little Corellas are protected under State and Federal law; the most applicable to Western Australia being the *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulations 2018*.

Little Corellas are not native to the southwest of Western Australia and are listed as a Category 3 (C3) declared pest in parts of the southwest under the *Western Australian Biosecurity and Agricultural Act 2007* (BAM Act). C3 categorisation requires management of a species but not exclusion (C1) or eradication (C2). Species such as Corellas can be controlled where necessary under licence from the DBCA. Guidelines are available from the DBCA on this process.

The Eastern Long-Billed Corella is not a declared pest species in Western Australia but are protected by Commonwealth legislation as indicated above.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

The DPIRD is the lead agency in managing pests, with a long-standing focus on controlling agricultural pests. However, it is ultimately landholders who are required to control pests on the land they manage so the responsibility is a shared one that crosses property boundaries and types of landholdings.

FINANCIAL IMPLICATIONS

The proposed phased management approach would cost approximately \$25,000 per year however that is dependent on the number of locations and levels of control implemented.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement & Consequence	Level of Risk	Risk Treatment
A decision to cull or not to cull the Corellas may result in community opposition and reputational damage.	Minor consequences which are likely, resulting in a medium level of risk.	<p>Management of Corellas is undertaken in a staged approach focusing first on community education, progressing to scare tactics, and culling as a last resort.</p> <p>Be guided by the State Strategy and take part in initiatives as they are developed.</p>

POLICY IMPLICATIONS

There is no Council Policy that relates to Corella Management in the City of Melville.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Do nothing and accept that Corellas are part of the environment.

CONCLUSION

The Officers recommendation to reduce Corella numbers in the City is to implement a three-phase approach.

The first phase will involve developing a community education campaign to discourage feeding and discuss the impacts Corellas have on the natural environment and community infrastructure.

The second phase will involve the City undertaking control measures as deemed appropriate by the City’s Feral Animal Control Contractor with input from the City on control methodology.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

The third phase is to be guided by the Department of Primary Industries and Regional Development Pest Parrot and Cockatoo Management Strategy for Western Australia. Once developed and control strategies identified and understood, the City will take part in any actions required as land managers.

It is anticipated that a phased approach including working with the State Government will meet the needs of Council's request to manage Corellas in the City of Melville.

OFFICER RECOMMENDATION (4013)

APPROVAL

That the Council endorse the phased approach to manage Corellas in the City through education and managed control and for the City to implement relevant actions that form part of the Department of Primary Industries and Regional Development (DPIRD) a Pest Parrot and Cockatoo Management Strategy for Western Australia as appropriate.

Urban Planning

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

Ward : All
 Category : Policy
 Application Number : Not Applicable
 Property : Not Applicable
 Proposal : Not Applicable
 Applicant : Not Applicable
 Owner : Not Applicable
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Item 15.2 Decibel Monitoring Devices in Public Venues – Ordinary Meeting of Council held 18 October 2022.
 Responsible Officer : Peter Prendergast
 Manager Statutory Planning

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input checked="" type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

- At the 18 October 2022 Ordinary Meeting of Council it was requested that a report to Council be prepared on the feasibility and power or authority of the City to include a planning condition requiring that all public entertainment venues, including Hotels, Clubs and Child Care Centres be fitted with a decibel monitoring device or devices that would control the sound levels of entertainment equipment to appropriate or prescribed levels.
- This report advises Elected Members in relation to this motion and recommends that a planning condition regarding decibel monitoring is not applied to public entertainment venues.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

BACKGROUND

At the Ordinary Meeting of Council held 18 October 2022 the following resolution of Council was forwarded by Cr Ross and approved by Council:

Council requests the CEO to prepare a report to Council on the feasibility and power or authority of the City to include a planning condition requiring that all public entertainment venues, including Hotels, Clubs and Child Care Centres be fitted with a decibel monitoring device or devices that would control the sound levels of entertainment equipment to appropriate or prescribed levels.

The reasons provided in support of the motion were:

1. Noise pollution is a health and safety issue, and the City has a responsibility to manage the issue.
2. As density increases there is likely to be more noise complaints against public entertainment venues. Self-regulating equipment such as decibel monitors are a preventative mechanism that would reduce the number of complaints and the costs to the City of dealing with complaints.
3. High density living has a number of adverse impacts and noise control is one of those disadvantages for residents. Ensuring acoustic insulation and noise control is good planning in maintaining the health and wellbeing of residents of the City.

City officers have reviewed a wide range of documentation in the preparation of this report, including:

- Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations).
- City of Melville Local Planning Scheme No. 6 (LPS No. 6).
- State Planning Policy 5.4 Road and Rail Noise (SPP5.4).
- Draft position statement – Special entertainment precincts; Department of Planning, Lands and Heritage 2019 (Draft Position Statement).
- Consultation paper: Managing amplified noise in entertainment precinct; Department of Water and Environmental Regulation 2019 (Consultation Paper).
- City of Melville Community Plan.

While the key focus of the State Government, Draft Position Statement and the Consultation Paper is to identify the challenges relating to the management of environmental noise in an entertainment precinct, the issues highlighted are considered to be relevant for suburban areas and other activity centres. The importance of creative industries, including hospitality venues to the state's economy and its cultural identity are acknowledged, as is the challenge of noise management. The Draft Position Statement and Consultation Paper envisage the nomination of special entertainment precincts in a town planning scheme and other changes to ensure business can operate with surety and without compromise to resident amenity. No indication is provided to indicate when the proposed measures will be finalised and adopted. This is indicative of the level of complexity associated with this issue.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

As per the documentation on page 10 of the consultation paper:

The primary instruments for noise regulation in Western Australia are the Environmental Protection Act 1986 (EP Act) and the Noise Regulations. The Noise Regulations set legally enforceable assigned (or allowable) noise levels for noise emitted from a premises or public place when received at another premises. The assigned levels are defined as outdoor levels and vary according to the type of premises receiving the noise and the time of day the noise is received. Higher levels of protection are afforded to the most sensitive premises, classed as 'noise sensitive'.

Local Governments (LG's) administer the Noise Regulations, and Environmental Health Officers employed by LG's, can be appointed as Authorised Persons for the purpose of investigating unreasonable noise emissions. If the noise received at noise-sensitive premises exceeds the assigned levels, an authorised officer has a range of enforcement options, including infringement notices, noise abatement directions, environmental protection notices, and prosecution, available under the EP Act to protect the health and amenity of sensitive receivers.

The City of Melville's Local Planning Strategy, which informs LPS No. 6 and associated Activity Centre Plans, aims to promote activity and intensity in centres while minimising change in suburban areas. Under the provisions of LPS No. 6, and the Regulation's, development approval is often not required for the change of use of a building to a childcare premises or hospitality venue depending on the zoning. This is consistent with the stated objective of the City as outlined in the City of Melville Strategic Community Plan, for residents and the broader Melville community to be able access services and amenities locally, and for businesses to be encouraged to establish here.

Scheme Provisions

MRS Zoning	:	N/A
LPS Zoning	:	N/A
R-Code	:	N/A
Use Type	:	N/A
Use Class	:	N/A

Site Details

Lot Area	:	N/A
Street Tree(s)	:	N/A
Street Furniture (drainage pits etc)	:	N/A
Site Details	:	N/A

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

DETAIL

Elected Members raised the idea of noise monitoring, as a way of dealing with noise complaints, at the 6 September 2022 Elected Members Engagement Session. Following the EMES, advice from the Department of Environmental Regulation, Noise Branch was provided in the 16 September 2022 Elected Member Bulletin. That advice was that the Noise Branch had advised that there was no head of power to require a premises to undertake the actions then proposed and that any policy or local laws relating to noise emissions maybe acting in ultra vires of the *Environmental Protection (Noise) Regulations 1997* and *Environmental Protection Act 1986*.

At the October 2022 Ordinary Council Meeting the Council supported a motion that noise monitoring via a planning condition, be explored. The motion was:

Council requests the CEO to prepare a report to Council on the feasibility and power or authority of the City to include a planning condition requiring that all public entertainment venues, including Hotels, Clubs and Child Care Centres be fitted with a decibel monitoring device or devices that would control the sound levels of entertainment equipment to appropriate or prescribed levels.

It is not recommended that the Council proceed further with this motion for the reasons outlined below. In particular, it is noted that there is no head of power to require the provision of mechanisms that would intervene with the noise generation from a premises should prescribed limits be exceeded. Notwithstanding the legal limitations, the complexity of noise regulation, the characteristics of sound and environmental circumstances would likely render a noise monitoring and intervention system unfeasible.

Development approval not required in many instances

Under the provisions of the Regulations, LPS No. 6 and City of Melville Activity Centre Plans and Structure Plans, development approval for the change of use of a building is not required from the City in many circumstances. This includes situations where the use is a 'P' use under the scheme or activity centre plan and no external works requiring development approval are required. This is consistent with the strategy of both the state government and the City of Melville to reduce regulatory burden on business.

If development approval is not required, then there is no opportunity to apply any condition of development approval. For existing commercial premises which operate in accordance with their development approval, or which were previously exempt from the need for approval, the ability to retrospectively impose a condition of development approval does not exist.

While a change of use is exempt from the need for development approval under the Regulations, that development is still required to operate in accordance with any other regulatory requirements that apply such as Noise Regulations. If noise from an entertainment venue exceeds the limits set by any applicable regulation, there are range of enforcement options available to the City as outlined in the background section of this report above.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

Acoustic report required for new development

Where a new commercial building is proposed or a change of use is not exempt from the need for development approval, a range of matters are considered as a part of the assessment process. Noise implications are one such material consideration for any associated planning assessment.

Where deemed necessary, supporting information in the form of an acoustic report may be required to be provided. Such reports typically serve two purposes. They can demonstrate that the building has been designed to ensure that the amenity of future occupiers is not negatively impacted by an external noise source, as required in SPP5.4, and/or they can demonstrate that the building has been designed to minimise the impact on adjoining landowners from the activities undertaken within it.

Under the provisions of Local Planning Policy 1.12 Child Care Premises and Family Day Care an acoustic report is required where a Child Care Premise is located adjacent to a residential property and may be required in other circumstances at the discretion of the decision maker. For other development types, an acoustic report may be required to be submitted in support of the associated assessment and decision-making process. The City takes into account the nature of the proposal, its location, scale and intensity and any other the relevant matters to determine whether an acoustic report is required or not.

Where an acoustic report is provided with an application this is referred to the City's Environmental Health Team for review. Where SPP5.4 applies, the acoustic report is referred to Main Roads Western Australia for its review and comment. Once relevant stakeholders are satisfied with the content of the report two standards conditions are applied to a development approval being that the recommendations of the report are complied with at all times unless agreed in writing by the City and that building is constructed in accordance with the recommendations of the report.

Invalid planning condition

As detailed in the EMB item on this subject, the City has received advice, that the introduction of a Local Planning Policy or local law relating to noise emissions and real-time intervention on noise levels could be considered to go beyond the powers of local government. It follows therefore that to impose via a condition of planning approval a requirement that a noise control device be installed to an approved development, that this would similarly go beyond the powers of the City. Control of noise nuisance in development applications is based on an approach whereby a proposal is required to demonstrate upfront that applicable limits will not be exceeded and that this compliance will be maintained during the life of the proposal. A condition requiring an applicant to install and maintain a device to intervene with noise generation, should noise levels be exceeded is likely to be considered unnecessary and unreasonable. To impose such a requirement is unlikely to stand the test of scrutiny if challenged for review at the State Administrative Tribunal (SAT).

Part 4 of the Development Assessment Panel Practice Notes: Making Good Planning Decisions produced by the State Government sets out the purpose of condition setting and tests to be applied to ensure a condition is valid. There are a number of tests to be considered and of relevance to this matter, conditions should;

- relate to planning, not matters covered by other legislation;
- not be applied with an ulterior motive in mind, such as reducing the need for City officers to take compliance action;
- not constrain the design or the operation of the use.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

In respect of these tests, the Environmental Noise Regulations are standalone regulations distinct from the legislation and regulations that exist to govern planning related matters, such as the planning regulations and the Planning and Development Act. Non planning related legislation and/or regulations are not relied upon when determining DA's. As noise levels are dictated to by non-planning related legislation and regulation, a condition of planning approval cannot be imposed, if in order to meet the requirements of the condition, reliance is placed on non-planning related regulation. To impose such a condition of planning approval would be unlikely to stand the test of scrutiny if challenged for review to the SAT.

There may be limited circumstances where a requirement for a noise monitoring/management device may be appropriate. If an acoustic report provided in support of a DA recommended the use of a decibel monitor as a mechanism to manage noise on site, then an associated condition of planning approval could be properly imposed, to ensure the recommendations of the acoustic report are implemented. In the absence of such a requirement, the installation of decibel monitoring equipment would not be substantiated.

Local Planning Scheme and Local Policy Requirements

Not applicable to this report.

R-Code Requirements

Not applicable to this report as the notice of motion relations to noise monitoring for non-residential premises rather than new residential development.

Acoustic considerations are applicable for some residential development including managing impacts on amenity such as in a mixed use setting or from plant and equipment.

STAKEHOLDER ENGAGEMENT

Advertising Required:	N/A
Neighbour's Comment Supplied:	N/A
Reason:	N/A
Support/Object:	N/A

It is recommended that Elected Members do not proceed with this motion and therefore there is no need to engage with stakeholders.

If Elected Members adopt a different position to the officer recommendation, stakeholder engagement will be required.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

I. COMMUNITY

Refer above, if Elected Members adopt a different position to the officer recommendation, stakeholder engagement will be required.

II. OTHER AGENCIES / CONSULTANTS

Refer above, if Elected Members adopt a different position to the officer recommendation, stakeholder engagement will be required.

STATUTORY AND LEGAL IMPLICATIONS

As noted in the detail section above, the imposition of a condition requiring decibel monitoring is likely to be outside the power of local government and therefore invalid.

FINANCIAL IMPLICATIONS

There are no financial costs if Elected Members choose not to proceed further with this motion. If Elected Members take a different position, there will be financial costs including additional officer time spent on this matter, legal fees to obtain further advice and costs associated with consultation.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement & Consequence	Level of Risk	Risk Treatment
By maintain the status quo City will receive complaints from neighbours regarding noise from non-residential premises. In the year 21/22 the City's records indicate there were eight concerns raised regarding commercial premises mostly relating to early delivery and bins. City officers will be required to investigate.	Low	City officers to investigate on an as required basis.
Condition requiring noise monitoring recommended to the DAP and not applied.	High	Elected members do not proceed with this motion.
Condition requiring noise monitoring applied to delegated decision and challenged by the applicant at the SAT.	High	Elected members do not proceed with this motion.
A condition may impose an unnecessary cost burden on business looking to establish in the City of Melville which may result in them establishing elsewhere.	Medium	Elected members do not proceed with this motion.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

POLICY IMPLICATIONS

There are no policy implications if Elected Members support the officer recommendation.

Non-residential development will continue to be assessed having regard to the relevant planning framework.

COMMENT

The imposition of a planning condition requiring to the installation of noise monitoring equipment is not considered feasible for the reasons outlined above, including the requirement that imposed conditions of planning approval must have a clear planning purpose. As stated, in accordance with the planning framework, some non-residential development including change of use proposals within activity centres, is exempt from the need for development approval, and for such exempt developments there is no opportunity to impose conditions to manage their operation. Similarly, there is no scope for the City to retrospectively impose conditions to existing approved developments. Where an existing approved use is operating in breach of the noise regulations, the issue is one for the Noise Regulations, as administered by the City's Environmental Health Officers.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Local Planning Policy 2.2 Non-residential development (LPP2.2) sets out a range of matters to be considered as a part of the assessment of development proposals. LPP 2.2 is scheduled for a review in the coming year. As a part of this review officers can consider modifications to the policy to clearly outline the circumstances where an acoustic report is required as a part of a development application and the matters to be considered. The review of the policy would be the subject of a future Council report.

CONCLUSION

It is recommended that there is no further action taken in relation to developing a planning condition in relation to the installation of decibel monitors devices in all public venues.

OFFICER RECOMMENDATION (4026)

APPROVAL

That the Council:

- 1 Notes the report on the feasibility and power or authority to require that all public entertainment venues, including hotels, clubs and child care centres to be fitted with a decibel monitoring device or devices that would control the sound levels of entertainment equipment to appropriate to prescribed levels; and**
- 2 Take no further action in developing a planning condition in relation to the installation of decibel monitoring devices in all public venues.**

UP23/4028 – ERECTION OF FLOODLIGHTS TO APPECROSS TENNIS CLUB – LOTS 260-264 (30) THE STRAND, APPECROSS WA 6153 (REC) (ATTACHMENT)

Ward : Applecross-Mount Pleasant Ward
 Category : Operational
 Application Number : DA-2023-30
 Property : Lots 260-264 (30) The Strand, Applecross WA 6153
 Proposal : Floodlight Additions to Applecross Tennis Club
 Applicant : Applecross Tennis Club Inc
 Owner : State of Western Australia (C/- City of Melville)
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : Peter Prendergast
 Manager Statutory Planning
 Previous Items : N/A

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input checked="" type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council to note.</i>

UP23/4028 – ERECTION OF FLOODLIGHTS TO APPLECROSS TENNIS CLUB – LOTS 260-264 (30) THE STRAND, APPLECROSS WA 6153 (REC) (ATTACHMENT)

KEY ISSUES / SUMMARY

- Department of Biodiversity, Conservation and Attractions (DBCA) approval is sought for the installation of floodlight columns to Courts 11-14 at Applecross Tennis Club.
- A total of twelve floodlighting towers are proposed, four at a height of 10 metres and eight to a height of eight metres.
- The application site is located on land zoned Parks and Recreation under the Metropolitan Region Scheme (MRS). As the subject site is located within the Swan Canning Development Control Area, DBCA is responsible for assessment of development applications as per Part 5, Section 72(1) of the *Swan and Canning Rivers Management Act 2006*.
- In accordance with the *Swan and Canning Rivers Management Act 2006*, the Minister for the Environment is the decision maker for Part 5 applications. The City's comments will be included in a final report prepared by DBCA to the Minister for Environment on the proposal.
- Details of the proposed development were presented to the Development Advisory Unit (DAU) meeting held on 14 March 2023 with an associated report published to the City's website.
- The application seeks approval for the floodlights to operate for the four courts up until 10pm every night to allow for League (Pennant) Tennis to be played up to that time.
- The details of the proposed development have been assessed against *Local Planning Scheme No. 6 (LPS6)*, *Local Planning Policy 1.16 – Flood and Security Lighting (LPP1.16)* and *Local Planning Policy 3.4 – Tennis Courts (LPP3.4)*.
- The application was advertised via letters to surrounding landowners and occupiers. Two on site signs were also erected and full details of the proposal were made available on the City's Melville Talks website.
- A total of 145 submissions were received with 13 objections, 131 supports and 1 neither supporting nor objecting to the proposal.
- The proposed development is considered to be acceptable when assessed against the relevant policy requirements. A condition of approval is recommended to limit floodlight operation to 9.00pm, in keeping with the relevant Council policy.
- It is recommended that the application be recommended to DBCA for conditional approval.



Figure 1: Aerial photography of subject site

UP23/4028 – ERECTION OF FLOODLIGHTS TO APPECROSS TENNIS CLUB – LOTS 260-264 (30) THE STRAND, APPECROSS WA 6153 (REC) (ATTACHMENT)

BACKGROUND

Scheme Provisions

MRS Zoning	:	Parks and Recreation
LPS6 Zoning	:	MRS Reserve for Parks and Recreation
R-Code	:	N/A
Use Type	:	Active Recreational Reserve
Use Class	:	N/A, no change to existing use of reserve (Tennis).

Site Details

Lot Area	:	13842m ²
Retention of Existing Vegetation	:	Yes
Street Tree(s)	:	Yes, to be retained
Street Furniture (drainage pits etc.)	:	N/A
Site Details	:	Refer to Figure 1 above

[4028 Plans Applecross Tennis Club](#)

BACKGROUND

In 2019, a development application (DA-2019-1424) was referred to the City for comment under Part 5 of the *Swan and Canning River Management Act 2006*. This sought approval for the conversion of two courts to grass courts, the conversion of four grass courts to hard courts and installation of 12, 10m high floodlight towers to the proposed four hard courts. However, this application was withdrawn in 2020 after it was determined by the DBCA that the cyclone fencing referenced in the plans was already approved, in which case the applicant made the decision to apply for the remainder of the work under a separate application.

Therefore, a new development application (DA-2020-442) was lodged in the form of a Form 7 permit which consisted of the following and was also referred to the City to comment on by DCBA:

- The conversion of four existing grass courts into four hard courts;
- These same four courts were proposed to be floodlit by 12, 10m high floodlight towers, with the lights to be off by 10pm;
- Two courts converted from hard courts to grass courts;
- Minor retaining along parts of the affected courts (less than 500mm); and
- Associated stormwater management.

After the City completed an extensive community consultation process, the City was of the opinion that the concerns raised by objectors had been adequately addressed by the supporting information and the benefits to the community of extending the operating hours of the tennis club were considered to be substantial. As such, the City recommended support the proposal to DBCA subject to the inclusion of conditions, including a condition to limit the use of the lights to 9pm only.

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The DBCA has issued two separate permits in relation to the above development application, in relation to court resurfacing and perimeter fencing. The issue of the floodlighting installation remains outstanding however and is the subject of this current application. It is noted that the Tennis Club currently operates without the benefit of any floodlighting which serves to limit their playing ability outside daylight hours.

DETAIL

The site is under the ownership of the City and is zoned Parks and Recreation under the MRS. Courts 11 and 12 are proposed to be lit by four towers, each at 10metres in height. Courts 13 and 14 are proposed to have four towers for each court, with the towers at 8m in height. The floodlights are proposed to automatically turn off at 10pm every night to allow for League (Pennant) Tennis to be played outside daylight hours.

The minimum distance between a residential property (41 The Strand) and the proposed floodlights is 30m, this distance being in respect of one single column. Other columns are located further away, with the maximum separation between residential properties and the floodlights being up to 70m (refer to Figure 2 below).



APPLECROSS TENNIS CLUB

Proposed Lighting Towers

Figure 2: Location of proposed floodlighting towers

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Lighting

The proposed lighting is designed in accordance with *Australian Standards AS2560.2 Sports Lighting* and *AS4282-2019 Control of Obtrusive Effect of Outdoor Lighting*. The Lighting report submitted in support of the proposal concludes that there will be no light spill into any of the nearby residential properties to the south of the tennis courts.

The Lighting Report includes inconsistencies in respect of the impact of the lighting on the footpath located to the immediate north of the tennis club. On the one hand it is suggested that the maximum light levels (brightness) exceed the recommended levels, although elsewhere the Lighting Report suggests otherwise. It is considered that as the use of the footpath does not directly impact residential amenity, and as users are unlikely to be compromised by a well-lit footpath, that for the purposes of this referral the inconsistency be simply noted.

Local Planning Policies

The application has been assessed against the provisions of LPS6, LPP1.16 pertaining to floodlighting towers on reserves under the care and control of the City of Melville and LPP3.4 pertaining to tennis courts lighting.

Local Planning Policy 1.16 – Flood and Security Lighting

Development Requirement	Proposed	Comments	Delegation to approve variation
(a) Location of the proposed lighting towers in relation to the surrounding properties.	Floodlighting towers setback a minimum of 30 metres from adjoining residential properties.	Requires assessment against the policy objectives of LPP1.16.	Development Advisory Unit (DAU)
(b) Light emissions wholly contained within the subject lot and satisfy <i>Australian Standard AS.2560 – Sports Lighting</i> .	The majority of light emissions are contained for within the subject lot. Light spillage does not impact any residential property.		
(c) Hours of operation for flood lighting.	Lights to be turned off by 10pm every night.		
(d) The potential adverse impacts upon any adjoining residential properties.	Light emissions contained for the majority, wholly within the subject site.		

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Local Planning Policy 3.4 – Tennis Courts

Development Requirement	Proposed	Comments	Delegation to approve variation
<p>4.1 Floodlighting for tennis courts shall comply with the following requirements and be certified** as being compliant with the relevant Australian Standard*** by a suitably qualified lighting consultant*:</p>	<p>Lighting Report has been prepared by a qualified lighting consultant who has confirmed that the report is compliant with the relevant Australian Standards. However, as identified above, a discrepancy in the Lighting Report has been identified which will need to be addressed.</p>	<p>Requires assessment against the policy objectives of LPP3.4.</p>	<p>DAU</p>
<p>4.2 A timer is to be installed in the lighting circuit to ensure that all floodlights are extinguished between the hours of 9pm and 7am.</p>	<p>Floodlights proposed to be extinguished at 10pm each night.</p>		
<p>4.3 In order to mitigate the impacts of the flood lighting on adjoining residential properties, screen planting may be required.</p>	<p>No screen planting proposed and not required as no light spill falls into any adjoining residential properties.</p>		
<p>6.1 Applications for the installation of tennis courts are to be made in accordance with the Regulations.</p>	<p>Lighting Report has been prepared by a qualified lighting consultant who has confirmed that the report is compliant with the relevant Australian Standards. No Acoustic Report has been provided as part of this revised submission. Applicants are relying on previous report provided as part of DA-2020-442.</p>		
<p>6.4 Subject to public consultation as outlined in Clause 4.3 above, the allowable times for the flood lighting of tennis courts may be increased to 10 pm where the amenity of the adjoining residents is safeguarded.</p>	<p>Floodlights proposed to be extinguished at 10pm each night.</p>		

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STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Advertising Required: Yes
 Neighbour's Comment Supplied: Yes
 Reason: Required pursuant to LPP 1.1 Planning Process and Decision Making Clause 3.4(a)
 Support/Object: 145 submissions were received with 13 raising objections, 131 in support and 1 neither supporting nor objecting to the proposal.

A summary of the comments received and the City's response is provided in the table below.

Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
Support expressed for extended usage of the courts .	Support Noted.	Uphold
The extended usage of hours for night is a benefit as the reserve would be utilised all year round and security enhanced.	Support Noted.	Uphold
More opportunity for players to play and develop their skills.	Support Noted.	Uphold
Very positive impact for club & community.	Support Noted.	Uphold
Currently use these courts and the lights would enable to get much more use of them during the year especially in winter when days are shorter.	Support Noted.	Uphold
Increases opportunities for both club members and the broader community, including local residents, to enjoy recreational tennis, which aligns with the City's strategic objectives to support healthy lifestyles and provide a sense of community.	Support Noted.	Uphold
The project will align to one of Tennis West's four strategic priorities, which are key to the successful and sustainable development of tennis facilities. Of these, Priority 2 - Enhancing venue capacity, specifically states "Additional floodlighting is required at strategic locations to support the demand for night tennis."	Support Noted.	Uphold

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Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
Concerns for the local fauna, especially the birdlife nesting and living in close proximity to the tennis club. Studies overseas have shown that LED lighting can affect the local biodiversity.	Noted. DBCA have received advice from their Species and Communities Program that seven nationally listed migratory shorebird species have been recorded within a 500 m radius of the Applecross Tennis Club. The most important observation is of Great Knot, which is listed as critically endangered under the <i>Biodiversity Conservation Act 2016</i> . The environmental report submitted in 2019, didn't include a fauna survey. This is a matter for consideration of the DBCA. An advice note to raise awareness of the expressed concern is proposed to be provided to the DBCA.	Advice Note recommended
There is no demonstrable demand for the proposed facilities.	Application has been lodged in response to applicants assessment of demand.	Not Uphold
Inadequate parking at the Club and what is being proposed is only going to exacerbate the matter further.	The installation of floodlighting does not result in the need for additional car parking as the tennis club land use exists already and has the associated car parking facilities.	Not Uphold
Applecross Tennis Club has continued to encroach upon open public space by building more tennis courts.	The proposed floodlighting extends the active use of the reserve for tennis. The use of the reserve for tennis is consistent with the intended use of the reserve given its zoning under the MRS as a 'Parks and Recreation' reserve.	Not Uphold
The new proposed lighting will cause light spill into the home.	A Light Assessment has been provided by the applicant demonstrating the proposed lights used within the towers will not spill into any residential properties to the south.	Not Uphold
Don't support lights till 10pm.	Noted. A condition has been recommended requiring the towers to be switched off after use and by 9pm each night.	Condition recommended
Social issues that will arise by lights being on late at night.	This is not a material planning consideration.	Not uphold
Not a valid application.	The application is valid and has been referred to the City by DBCA.	Not Uphold
The proposed light poles will be visually obtrusive.	Concerns about the visual amenity of the foreshore are rebuffed on the grounds that the generally uninhibited vista of the Swan River foreshore is not considered to be encumbered via the narrow light poles proposed.	Not Uphold

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Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
Environmental statement within Environment report is purely subjective.	Noted. This is referring to a report provided as part of a previous application in 2019. No environmental report has been provided to the City by DBCA to review as part of the City's assessment of this application. However, DBCA as part of their assessment will need to ensure all relevant environmental requirements are addressed. An advice note has been recommended ensuring all environmental aspects are to comply with the relevant standards.	Advice Note recommended
The statement from the report dated 13/8/2019 prepared by Gabriels Hearne Farrel Acoustic Consultants dated 13/8/2019 that <i>"predicted noise emissions are unlikely to be any louder than those that exist"</i> is clearly based on daytime use of hardcourts but is not valid for the current application for floodlighting to permit night tennis up to 10pm.	Noted. This is referring to a report provided as part of a previous application in 2019. No acoustic report has been provided to the City by DBCA to review as part of the City's assessment of this application. However, DBCA as part of their assessment will need to ensure all relevant noise requirements are addressed. An advice note has been recommended ensuring noise is to comply with the relevant standards.	Advice Note recommended
Contrary to existing City policies.	Noted. Conditions have been recommended to ensure compliance with relevant City Local Planning Policies in regard to operating hours of the lights being switched off at 9pm each night and before the floodlights are installed, verification is required to confirm that the floodlights are in accordance with the relevant Australian Standards.	Conditions recommended

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Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
Noise emitting from the development.	<p>The application is for twelve floodlighting towers. The noise associated with tennis being played on this reserve is considered acceptable and consistent with the designation of the reserve at Applecross Tennis Club as an active reserve. The lighting is required to be switched off from 9pm which will ensure sports activity cease at this time reducing any potential amenity impact.</p> <p>An advice note has been recommended to ensure that noise is to comply with the <i>Environmental Protection (Noise) Regulations 1997</i> at all times.</p>	Advice Note recommended
No protection or cover provided from the lights.	The proposed floodlighting towers have been designed to minimise light spill. The floodlights are designed in accordance with the relevant Australian Standards to direct illumination towards the playing area, and as stated avoids spill towards residential properties.	Not Uphold

II. OTHER AGENCIES / CONSULTANTS

As the subject site is located within the Swan Canning Development Control Area, DBCA is responsible for assessment of development applications as per Part 5, Section 72(1) of the *Swan and Canning Rivers Management Act 2006*. In accordance with the *Swan and Canning Rivers Management Act 2006*, the Minister for the Environment is the decision maker for Part 5 applications. The City’s comments will be included in a final report prepared by DBCA to the Minister for Environment on the proposal.

STATUTORY AND LEGAL IMPLICATIONS

If the Minister for Environment gives an approval subject to a condition or restriction, the applicant may request the Minister to reconsider that condition or restriction under Part 5 s.82 of the *Swan and Canning Rivers Management Act 2006*.

FINANCIAL IMPLICATIONS

There are no financial implications for the City relating to this proposal.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

There is no strategic risk or environmental management implications with this application.

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POLICY IMPLICATIONS

There are no Local Planning Policy or Council Policy implications in relation to this development.

COMMENT

Sections 2 and 3 of LPP1.16 require planning approval for the installation of all floodlights within reserves under the care and control of the City of Melville. Applications for floodlighting in such instances are assessed taking into account the following:

- (a) The location of the proposed lighting towers in relation to the surrounding properties.
- (b) Whether the light emissions are wholly contained within the subject lot and satisfy Australian Standard AS.2560 – Sports Lighting.
- (c) Hours of operation.
- (d) The potential adverse impacts upon any adjoining residential properties.

Sections 4 of LPP3.4 outlines that tennis courts are to comply with the following in respect of lighting:

- 4.1 Floodlighting for tennis courts shall comply with the following requirements and be certified as being compliant with the relevant Australian Standard by a suitably qualified lighting consultant.
- 4.2 A timer is to be installed in the lighting circuit to ensure that all floodlights are extinguished between the hours of 9pm and 7am.
- 4.3 In order to mitigate the impacts of the flood lighting on adjoining residential properties, screen planting may be required.

LPS6 does not have any specific requirements regarding the setback distances for structures on reserved land, however, the scheme objectives for public open space promote the use of recreation buildings and associated facilities to encourage active and passive use of the City's reserves and open spaces.

In consideration of the above criteria, it is considered that the twelve floodlights proposed by this proposal are supported in planning terms as:

- The closest tower is located 30 metres from the nearest residential property to the south along The Strand, and there is no light spill from any of the proposed floodlighting towers;
- The applicant has provided a Light Assessment which has been prepared by a suitably qualified lighting engineer, assessed by the City, and supported on that basis. The lighting report demonstrates that there is no lighting spill onto any of the properties located on The Strand;
- The ability to play tennis and therefore use the reserve to its full potential after dark is supported as being aligned with the Scheme objectives in respect of Open Space reserves;

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- It is recommended that the floodlights are turned off by 9pm. This will align the use with LPP1.16 and LPP3.4. This will still allow the opportunity for tennis to be played for longer durations of the day than currently enjoyed at Appalcross Tennis Club. However, 9pm rather than 10pm is considered acceptable as it allows players and spectators to finish playing and leave the tennis courts before 10pm. This is also consistent with Clause 6.4 of LPP3.4 which states as follows:

6.4 Subject to public consultation as outlined in Clause 4.3 above, the allowable times for the flood lighting of tennis courts may be increased to 10pm where the amenity of the adjoining residents is safeguarded.

It is acknowledged that the light from the floodlights if operational until 10pm would not in itself compromise amenity levels for owners and occupiers of the closest residential properties, there being no light spill towards those properties from the floodlights, and there being a substantial separation distance between them. Rather, there is a concern that the activities associated with the end of play, such as the opening and closing of car doors, car engine noise, and conversations between players, have the ability to compromise amenity, particularly if taking place after 10pm when the ambient noise environment for residents is at its quietest. To reduce the hours of operation to 9pm aligns with the concerns expressed by those submitters who oppose the development. As such a condition has been recommended to DBCA outlining this; and

- In view of the above and the conditions recommended to the DBCA, it is considered that any amenity impacts from the proposed floodlighting towers will be effectively managed.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

It is recommended to Council that the DBCA be advised that the City supports the proposed development subject to the imposition of conditions of approval.

If Elected Members have an alternative view, this may form the recommendation to the DBCA from the City. This will then be taken into account by the DBAC in dealing with the application from then on. It is noted that as the Minister is the final decision maker in this case, the report from the DBCA to the Minister will make reference to the recommendation of the City in respect of this matter.

CONCLUSION

The proposed development is considered to be consistent with the intent and provisions of Local Planning Scheme No. 6, Local Planning Policy 1.16 – Flood and Security Lighting and Local Planning Policy 3.4 – Tennis Courts. The application is recommended for conditional approval to DBCA on that basis.

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OFFICER RECOMMENDATION (4028)

APPROVAL

That the Council recommends approval to Department of Biodiversity, Conservations and Attractions subject to the following:

Conditions:

- 1. All stormwater is to be retained on site in accordance with the approved detailed design plans, to the satisfaction of the Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.**
- 2. All floodlights are to be installed in accordance with AS2560.2.1-2003 and AS4282 (as amended) and are to be hooded such that the light source is not visible from the adjoining residential properties to the satisfaction Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.**
- 3. The flood lights are to be installed with a timer which ensures the lights do not operate between the hours of 9pm and 6am, Monday to Sunday.**
- 4. Prior to the floodlights becoming operational, written confirmation from a suitably qualified lighting consultant to confirm that the lighting has been installed in compliance with conditions 2 and 3 above will be required to the satisfaction of Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.**

Advice Notes:

- i. The *Environmental Protection (Noise) Regulations 1997* must be complied with at all times. These regulations stipulate allowable noise levels which if breached constitute unreasonable noise for the purposes of the *Environmental Protection Act 1986*. These regulations can be obtained from www.slp.wa.gov.au.**
- ii. It is recommended that an updated Environmental Report shall be provided to the Department of Biodiversity, Conservation and Attractions (including a fauna survey) to ensure the proposed development is compliant with all necessary environmental legislation.**

15 MOTIONS WITH PREVIOUS NOTICE

15.1 State Government Planning Changes

Motion

That the Council:

1. **Strongly objects to the State Government's proposed changes to the Planning and Development Act 2005 (WA), which will erode local decision making on important planning matters.**
2. **Requests that the Mayor write to the Minister for Planning (WA) and local State MLAs and MLCs:**
 - a. **outlining the Council's opposition to the proposed changes and the erosion of local decision making and community input; and**
 - b. **calling upon the State Government abandon the proposed changes, or failing that, reforming the DAP and SMDAP panels so that local government councillors make up a majority of the members of each panel.**

Reasons for the Motion as Provided by Cr M Woodall

1. The State Government's recently announced changes to the *Planning and Development Act 2005 (WA)* include:
 - a. Allowing Development Assessment Panel's (DAP's) to determine all developments over \$2 million value (except single homes); and
 - b. Allowing the WA Planning Commission (via the Special Matters DAP) to determine developments of major significance over \$50m value or in precinct of State importance (including the Canning Bridge Activity Centre Plan area).
2. In the context of Melville, this will effectively mean that all development applications (except single homes) will be determined by either the DAP or the SMDAP instead of the Council. Although the DAP system will still be 'opt-in', we know from past experience that developers nearly always choose the DAP process.
3. Particularly concerning is the proposed removal of the exclusion that applies to less than 10 'multiple dwelling' developments. This means a multiple dwelling development of any size over \$2 million will be able to opt-in to the DAP system.
4. This will reduce the community's input on developments in our suburbs and adjacent to residential homes. These smaller-scale residential developments are best determined at the Council level with local community input, rather than clogging up the DAP system and bypassing locals.
5. Overall the DAP system has failed to meet community expectations regarding new developments. The panels comprise a majority of appointed (unelected) members who are not answerable to the community, unlike councillors. Whilst community consultation does occur, very little weight appears to be placed on the views of the local community. Council recommendations to the DAP are rarely referenced and appear to be routinely ignored.
6. The proposed SMDAP development pathway is perhaps even more concerning. This body is a successor to the SDAU originally set up during COVID to assist with development approvals at a time of economic uncertainty. It is not clear why it needs to become permanent and in any event the SDAU has only determined 16 applications in over 2 years – demonstrating it is ineffective and inefficient. Unsurprisingly though it has approved 100% of applications.

15.1 State Government Planning Changes

7. However the most significant concern is its ability to completely bypass local planning schemes in its decision making. With the Canning Bridge area deemed a precinct of 'State importance', many if not all major developments in the area may fall within its jurisdiction. This should ring alarm bells for residents in the Canning Bridge area, who may lose any protection that a revised Canning Bridge Activity Centre Plan might otherwise bring.
8. In summary, the proposed changes to the DAPs and SMDAP erode the role of Local Government in providing a valuable community perspective on planning proposals. The State Government should heed the views of Local Governments across Perth and abandon these changes, or failing that, at least rebalance the DAP and SMDAP panels by having 3 local government members and 2 appointed members.

15.2 Asbestos Removal at Mt Pleasant Bowling Club

Motion

That the Council directs the CEO:

1. **To remove all asbestos from the Mt Pleasant Bowling Club during the forthcoming renovations.**
2. **Use funds from the Asbestos Removal Fund in addition to the funds already set aside in the refurbishment project for the removal of all asbestos.**
3. **In the event that there may be insufficient funds in the Asbestos Removal Fund, funds from elsewhere would be used to make up the shortfall.**

Reasons for the Motion as Provided by Cr K Mair

1. Mt Pleasant Bowling Club has been identified by officers as being one of the seriously contaminated sites in the City of Melville.
2. A presentation was made by ADSA (Asbestos Diseases Society of Australia Inc.) at WALGA regarding the fact that people are still getting asbestos disease from existing constructions with asbestos. In their presentation, they stated that in Western Australia, the youngest person who contracted asbestos disease was 19 years old 3 years ago.
3. The asbestos issue at the Mt Pleasant Bowling Club goes back 30 years when the original asbestos roofing was removed, dropping asbestos debris & dust onto the ceiling below. About 20 years ago, the Main Hall ceiling was replaced. Now it needs replacing again because asbestos fibres have migrated from the adjacent contaminated ceiling/veranda linings. When the contractor removes the 45% of existing veranda linings during the current renovations, it would be advantageous to remove the asbestos linings and asbestos debris sitting on it as well as all the other asbestos on the site.
4. Removal of asbestos from the Mt Pleasant Bowling Club site would not only mitigate the risk of asbestos disease to Club members, visitors and tradespeople attending the site, but also remove the necessity for more refurbishments in the future caused by the presence of asbestos in the building.

16 MOTIONS WITHOUT PREVIOUS NOTICE (approval by absolute majority)

17 MATTERS FOR WHICH MEETING WAS CLOSED TO THE PUBLIC

18 DECISIONS MADE WHILE MEETING WAS CLOSED TO THE PUBLIC

19 CLOSURE